FILE COPY

FEB 20 197

MICHAEL RODAK, JR.,

(22-D) **APPENDIX**

IN THE

Supreme Court of the United States

October Term, 1972

Nos. 72-792, 72-802

New York State Department of Social Services; its Commissioner, ABE LAVINE; New York State Department of Industrial Relations; its Commissioner, LOUIS LEVINE; Erie County Department of Social Services and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

Onondaga County Department of Social Services and its Commissioner, JOHN L. LASCARIS,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Filed November 29, 1972 and December 1, 1972
Probable Jurisdiction Noted January 15, 1973

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX TO APPENDIX.

	Page
Docket Entries	1
Complaint	17
Decision Granting Motion for Class Action and Ordering Convening of a Three-Judge Court	34
Answer on Behalf of State Defendants	39
Exhibits Attached to Answer:	
A—Chapter 102 of the Laws of 1971	47
B—Administrative Letter No. 71 PWD—34, dated May 13, 1971, from George K. Wyman, Commissioner, to Commissioners of Social Services	50
C—Administrative Letter No. 71 PWD—43, dated June 9, 1971, from George K. Wyman, Commissioner, to Commissioners of Social Services	53
D—Administrative Letter No. 71 PWD-52, dated June 28, 1971, from George K. Wyman, to Commissioners of Social Services	80
Exhibit 1—Certification for Reinstatement of Public Assistance Grant	88
E—Chapter 101 of the Laws of 1971	89
F—Administrative Letter No. 71 PWD-48, dated June 15, 1971, from George K. Wyman, Commissioner, to Commissioners of Social Services	96
Exhibit 1—Notice of Failure to Report or Continue to Participate in Public Work Project	111
Exhibit 2—Monthly Report of Work Relief Program Referrals	113
Exhibit 3—Quarterly Report of Public Works Program	115

Page

G—Departmental regulations filed with the Secretary of State of the State of New York on July 30, 1971 117

Notice of Argument of Motion to Intervene As a Defendant 134

Motion to Intervene As a Defendant 135

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and its Commissioner, John L. Lascaris 138

Exhibits Attached to Answer—The Exhibits referred to in the answer are exactly the same as those Exhibits attached to the answer heretofore filed by the New York State Department of Social Services 145

Order Temporary Restraining Order dated August 6, 1971 146

Order Temporary Restraining Order dated August 8, 1971 147

Notice of Order Granting Leave to Intervene 148

Order Granting Leave to Intervene 149

Stipulations of Fact 150

List of Exhibits 202

Letter Objecting to Certain Exhibits 207

Exhibit 2A—Laws of New York—By Authority, Chapter 298 208

Excerpts from Deposition of Herbert Simon and Nelson Hopper 216

Excerpts from Deposition of Philip Pinsky 226

Excerpts from Deposition of George Demmon 232

Excerpts from Deposition of Edward Phillips 245

Excerpts from Deposition of Jule Sugarman 254

Answer of State Department of Social Services to Plaintiffs' Interrogatories 258

Memorandum dated December 1, 1971 286

	Page
Answer of Department of Labor to Plaintiffs' Interrogatory	288
Letter dated November 11, 1971	305
Memorandum dated December 20, 1971	308
Answer of Erie County to Plaintiffs' Interrogatories	310
Opinion of the Court dated July 28, 1972	335
Order of August 1, 1972	335
Order and Judgment dated August 25, 1972	336
Motion to Amend Order	337
Notice of Proposed Order	338
Proposed Order	339
Proposed Amendment to Proposed Order	348
Order dated October 18, 1972 Amending Prior Order	354
Notice of Appeal of State Appellants	354
Notice of Appeal of Erie County Defendants	354
Notice of Appeal of Onondaga County Appellants	356
Letter dated January 15, 1973	357

Docket Entries.

Civil Docket

UNITED STATES DISTRICT COURT

Civil 1971-306

Jul 1-71 Filed Complaint (Class Action Motion Granted 8/6/71.)

Jul 1-71 Filed Pltfs'., Motion for leave to serve complaint and related motions.

Jul 1-71 Filed Order appointing process server-Curtin, *J.*

Jul 1-71 Filed Pltfs'., Motion for leave to file *in forma pauperis.*

Jul 1-71 Filed Order granting leave to file *in forma pauperis*—Curtin, *J.*

Jul 1-71 Filed Order to Show Cause for Temporary Restraining Order, etc.—Curtin, *J.* ret. 7/2/71—Granted to named Pltfs.

Jul 1-71 JS 5 made only—motion to convene 3 Judge Court & Motion for class action—adj. 7/9/71.

Jul 1-71 Issued summons & 7 copies (service to be made by atty.)

Jul 2-71 Filed Affidavit of Michael A. O'Connor.

Jul 9-71 Filed Order granting Pltfs' motion and Temporary Restraining Order—Curtin, *J.*

Jul 9-71 Filed Affidavit of State Defts. in opposition to preliminary injunction and to convening of three-judge court.

Jul 9-71 Filed Pltfs' Affidavits of Service-Show cause order and summons & complaint served 7/1/71 on N. Y. S.

Atty. General and Dept. of Industrial Relations, George G. Sipprell and Fred Discaglio.

Jul 9-71 Filed Affidavit of Mary Archambault.

Jul 9-71 Filed Affidavit of Rose Bellegia.

Jul 9-71 Filed Affidavit of Dock Daniels.

Jul 9-71 Filed Affidavit of Ralph Emerich.

Jul 9-71 Filed Affidavit of Doreen Guest.

Jul 9-71 Filed Affidavit of Walter Kurkoski.

Jul 9-71 Filed Affidavit of Constance McNair.

Jul 9-71 Filed Affidavit of Mildred Prim.

Jul 9-71 Filed Affidavit of Reyes Rodriguez.

Jul 9-71 Filed Affidavit of Minerva Romera.

Jul 9-71 Filed Affidavit of Ida Mae Watts.

Jul 9-71 Filed Affidavit of Linda Wilson.

Jul 14-71 Filed State Defts.' Motion to dismiss complaint—ret. 7/16/71.

Jul 16-71 Filed Affidavit of Dennis R. Yeager.

Jul 19-71 Filed Affidavit of James C. Meagher.

Jul 21-71 Filed Affidavit of Wilbur B. Pittinger, Jr.

Jul 9-71 Motion for class action & motion by Deft., for 3 judge court-briefs to be submitted by Pltf. 7/14/71-adj. 7/16/71

Jul 16-71 Motion by Pltfs. for class action-dec. resvd. Motion by Pltfs., for temporary restraining order to apply to all members of the class-decision reserved.

Docket Entries.

Jul 26-71 Filed Affidavit of Michael A. O'Connor.

Jul 26-71 Filed Temporary Restraning Order—Curtin, *J.*

Aug 2-71 Filed Pltfs'., Notice to Produce.

Aug 4-71 Filed Affidavit of Service of Michael A. O'Connor.

Aug 4-71 Filed Affidavit of Service of David M. Klein.

Aug 4-71 Filed Affidavit of Robert D. Kolken.

Aug 4-71 Filed Affidavit of Gloria J. McFarland.

Aug 4-71 Filed Temporary Restraining Order—Curtin, *J.* (notice & copy of Jean Coon & Mr. Casey).

Aug 6-71 Filed Pltfs'. First Interrogatories to Defts. New York State Department of Social Services, George K. Wyman, Erie County Department of Social Services and George G. Sipprell.

Aug 6-71 Filed Pltfs'. First Interrogatories to Defts. New York State Department of Labor and Louis L. Levine.

Aug 6-71 Filed Pltfs'. Affidavit of Service.

Aug 6-71 Filed Decision & Order denying Defts. motion to dismiss complaint; granting Pltfs. motion for class action; directing Defts. to post notices in appropriate form; requesting the convening of a three-judge court and denying Pltfs. motion for a temporary restraining order with respect to each member of the class—Curtin, *J.* (copy given to Mr. O'Connor) (notice & Copy to Messrs. Yeager, Coon & Gambacorta).

Aug 6-71 Filed Affidavit of Douglas A. Eldridge.

Aug 6-71 Filed Temporary Restraining Order—Curtin, *J.*

Docket Entries.

Aug 9-71 Filed Affidavit of John Edgar *re* James More.

Aug 9-71 Filed Affidavit of John Edgar *re* Stan Fleming.

Aug 9-71 Filed Affidavit of John Edgar *re* Robert Allen.

Aug 9-71 Filed Affidavit of Harriet Rose.

Aug 9-71 Filed Temporary Restraining Order—Curtin, *J.*

Aug 10-71 Filed Pltfs'. Notice of Deposition.

Aug 10-71 Filed Pltfs'. Affidavit of Service.

Aug 11-71 Filed Designation of Judges-Kaufman, Acting Chief Judge-CCA (notice to order of 12/21/71 & copy to Messrs. O'Connor, Yeager, Gambacorta and Jean Coon).

Aug 23-71 Filed Pltf's. Affidavit in Support of Intervention.

Aug 23-71 Filed Temporary Restraining Order-Curtin, *J.*

Aug 24-71 Filed Pltf's. Affidavit of Service.

Aug 26-71 Filed Deft., New York State, Answer.

Aug 27-71 Filed Pltfs'. Notice of Deposition & Affidavit of Service.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., NY State Dept. of Social Services through Joseph Fitzsimmons.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., N. Y. State Dept. of Social Services thru Francis C. Schreck.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., NY State Dept. of Labor.

Docket Entries.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., Erie County Dept. of Social Services.

Sep 3-71 Filed Affidavit of Harold H. Levene (copies to Jean Coon, Messrs. O'Connor, Gambacorta & Nathanson per request contained in ltr. of Pltfs'. Atty. Dtd. 9-2-71).

Sep 3-71 Filed Temporary Restraining Order—Curtin, *J.* (notice & copy to Jean Coon, Messrs. O'Connor, Gambacorta & Nathanson).

Sep 3-71 Filed Intervenor's Notice of Argument & Motion to Intervene as a Defendant-ret. 9-17-71-Granted.

Sep 13-71 Filed Pltfs'. Supporting Affidavits, Exhibits & Order to Show Cause for Contempt of Court for failure to obey judgments-ret. 9-17-71-Denied; Motion for damages-Withdrawn.

Sep 16-71 Filed Defts., New York State, Affidavit in opposition to Motion to punish for contempt.

Sep 16-71 Filed Defts., New York State, Affidavit in support of Motion to intervene as defendant

Sep 17-71 Filed Pltfs'. Affidavit of Service.

Sep 17-71 Filed Pltfs'. Affidavit of Personal Service.

Sep 17-71 Filed Pltfs'. Affidavit of Douglas A. Eldridge.

Sep 17-71 Filed Deft., Lascaris, Affidavit in Opposition.

Sep 22-71 Filed Pltfs'. Affidavit re JoAnn Scott & Clara Bornatimer.

Sep 22-71 Filed Temporary Restraining Order re JoAnn Scott & Clara Bornatimer-Curtin, *J.*

Sep 22-71 Filed Affidavit of Virginia Schuler, Atty. for Pltf., Betty Glenn.

Sep 22-71 Filed Temporary Restraining Order *re* Betty Glenn-Curtin, *J.*

Sep 22-71 Filed Pltfs'. Affidavit *re* Betty Sallis.

Sep 22-71 Filed Affidavit of Petty Sallis.

Sep 22-71 Filed Temporary Restraining Order *re* Betty Sallis-Curtin, *J.*

Sep 22-71 Filed Affidavit of Beverly Stone.

Sep 22-71 Filed Temporary Restraining Order *re* Beverly Stone-Curtin, *J.*

Sep 22-71 Filed Pltfs'. Affidavit in Support of Intervention *re* James Barrett, Richard A. Chambers, Sr., Mark Eames & Laurence Wagoner.

Sep 22-71 Filed Temporary Restraining Order *re* James Barrett, Richard A. Chambers, Mark Eames & Laurence Wagoner-Curtin, *J.*

Sep 28-71 Filed Order granting John L. Lascaris and Onondaga County Department of Social Services to intervene as a Deft., and denying Pltfs'. motion to hold Defts., in contempt of court-Curtin, *J.* (notice & Copy to Jean Coon & Virginia Schuler and Messrs. O'Connor, Yeager, Nathanson & Karp).

Sep 29-71 Filed Affidavit of Michael A. O'Connor, Attorney for Charlotte Jimerson and Laura Gilbert.

Sep 29-71 Filed Temporary Restraining Order *re* Charlotte Jimerson and Laura Gilbert-Curtin, *J.*

Sep 29-71 Filed Affidavit of Munira Rahim.

Docket Entries.

Sep 29-71 Filed Temporary Restraining Order *re* Munira Rahim-Curtin, *J.*

Sep 29-71 Filed Affidavit of Linda Sargent.

Sep 29-71 Filed Temporary Restraining Order *re* Linda Sargent-Curtin, *J.*

Oct 4-71 Filed Pltfs'. Notice of Deposition.

Oct 7-71 Filed Pltfs'. Notice of Deposition.

Oct 13-71 Filed Affidavit of Michael A. O'Connor *re* Norman Michael & Elvira Michael.

Oct 13-71 Filed Affidavit of Georgia Cassell.

Oct 13-71 Filed Affidavit of Michael A. O'Connor *re* Lillie Harris.

Oct 13-71 Filed Temporary Restraining Order *re* Norman Michael, Elvira Michael, Georgia Cassell and Lilli Harris-Curtin, *J.*

Oct 13-71 Filed Affidavit of Donna Bieliski.

Oct 13-71 Filed Temporary Restraining Order *re* Donna Bieliski-Curtin, *J.*

Oct 13-71 Filed Affidavit of Dorothy Livingston.

Oct 13-71 Filed Temporary Restraining Order *re* Dorothy Livingston-Curtin, *J.*

Oct 13-71 Filed Affidavit of Gladys Taylor.

Oct 13-71 Filed Temporary Restraining Order *re* Gladys Taylor-Curtin, *J.*

Oct 22-71 Filed Pltfs'. Affidavits in Support of Intervention of Harold Luce, Una Luce, William Morgan, Linda Morgan, Peter Plarre and Mary Ethel Goodman.

Docket Entries.

Oct 22-71 Filed Temporary Restraining Order *re* Harold Luce, Una Luce, William Morgan, Linda Morgan, Peter Plarre and Mary Ethel Goodman-Curtin, *J.*

Oct 29-71 Filed Affidavit of Michael A. O'Connor *re* Beverly Waldron, Valeria Cray and Linda Cray & Affidavit of Henrietta Smith.

Oct 29-71 Filed Temporary Restraining Order *re* Beverly Waldron-Curtin, *J.*

Oct 29-71 Filed Temporary Restraining Order *re* Valeria Gray, Linda Cray & Henrietta Smith-Curtin, *J.*

Nov 8-71 Filed Affidavit of Florence McMahon.

Nov 8-71 Filed Temporary Restraining Order *re* Florence McMahon-Curtin, *J.*

Nov 8-71 Filed Pltfs'. Affidavit *re* Billy White & Betty White.

Nov 8-71 Filed Temporary Restraining Order *re* Billy White & Betty White-Curtin, *J.*

Nov 8-71 Filed Affidavit of Ellen Rivenburgh.

Nov 8-71 Filed Temporary Restraining Order *re* Ellen Rivenburgh-Curtin, *J.*

Nov 8-71 Filed Pltfs'. Affidavits *re* Clinton Braction, Jr.

Nov 8-71 Filed Temporary Restraining Order *re* Clinton Brachtion-Curtin, *J.*

Nov 9-71 Filed Order to Show Cause for Temporary Restraining Order, etc.-Curtin, *J.* ret. 11-19-71-submitted. Status Report adj. 12-17-71-Pltf. Briefs by 1-17-72-Reply briefs by 2-1-72 Arguments at later date.

Docket Entries.

Nov 19-71 Filed Defts'., New York State, Affidavit.

Nov 22-71 Filed Pltfs'. Affidavit *re* Ernest Shaffer and Phyllis Shaffer.

Nov 22-71 Filed Temporary Restraining Order *re* Ernest Shaffer and Phyllis Shaffer-Curtin, *J.*

Nov 24-71 Filed Affidavit of Mary Coleman.

Nov 24-71 Filed Pltfs'. Affidavit *re* Dolores Troy.

Nov 24-71 Filed Temporary Restraining Order *re* Mary Coleman and Dolores Troy-Curtin, *J.*

Dec 14-71 Filed Affidavit of Robin L. Gray.

Dec 14-71 Filed Temporary Restraining Order *re* Robin L. Gray-Curtin, *J.*

Dec 15-71 Filed Pltfs'. Affidavit *re* Chester Conklin and June Conklin.

Dec 15-71 Filed Decision & Order denying Temporary Restraining Order *re* Chester Conklin and June Conklin-Curtin, *J.* (notice & copy to Mr. O'Connor and Jean Coon)

Dec 15-71 Filed Affidavit of Rollin Shaw.

Dec 15-71 Filed Decision & Order denying Temporary Restraining Order *re* Rollin Shaw-Curtin, *J.* (notice & Copy to Mr. O'Connor and Jean Coon).

Dec 17-71 Filed Deposition of Mervyn Schwartz, Willie Mae Keaton and George J. Demmon (notice to attorneys).

Dec 17-71 Filed Deposition of Edwin L. Nowak and Janet Stroman (Notice to attys).

Dec 17-71 Filed Deposition of Edward Phillips (notice to attorneys).

Dec 17-71 Filed Deposition of Herbert Simon and Nelson Hopper (Notice to attys.)

Dec 17-71 Filed Deposition of Jule M. Sugarman (notice to attorneys).

Dec 17-71 Filed Reply of Deft., George G. Sipprell, as Comm. of the Erie County Dept. of Social Services to Pltf's. First Interrogatories.

Dec 17-71 Filed Defts'., New York State Department of Labor and Louis L. Levine, Answer to Interrogatories.

Dec 17-71 Filed Defts'., State Department of Social Services and Commissioner Wyman, Answers to Pltfs'. First Interrogatories.

Dec 21-71 Filed Affidavit of Carole Kampshoff.

Dec 21-71 Filed Temporary Restraining Order *re* Carole Kampshoff-Curtin, *J.*

Dec 21-71 Filed Affidavit of Anna Callahan.

Dec 21-71 Filed Temporary Restraining Order *re* Anna Callahan-Curtin, *J.*

Dec 21-71 Filed Order convening three-judge panel on 2-24-72 and setting forth dates for filing of briefs, etc.-Curtin, *J.* (notice & Copy to Messrs. O'Connor, Yeager, Lefkowitz-attn. Jean Coon, Koldin and Gambacorta).

Dec 23-71 Filed Affidavit of Rose Marie Ojeda, Roland Ojeda & Reynold Ojeda.

Dec 23-71 Filed Temporary Restraining Order *re* Rose Marie Ojeda, Roland Ojeda and Reynold Ojeda-Curtin, *J.*

Jan 7-72 Filed Affidavit of Annie Ruth Ford and Temporary Restraining Order-Curtin, *J.*

Docket Entries.

Jan 17-72 Filed Pltfs'. Memorandum of Law.

Jan 17-72 Filed Pltfs'. Affidavit of Service of Memorandum of Law.

Jan 18-72 Filed Deposition of Philip C. Pinsky (notice to attys.)

Jan 18-72 Filed Temporary Restraining Order *re* Patricia Elkins-Curtin, *J.*

Feb 1-72 Filed Temporary Restraining Order *re* Glenn Wilson with endorsement by Judge Curtin denying application for an order.

Feb 2-72 Filed Pltfs'. Stipulations of Fact.

Feb 7-72 Filed Defts'. New York State, Memorandum of Law.

Feb 7-72 Filed Temporary Restraining Order *re* Helen Kilduff with endorsement by Judge Curtin denying application for a T. R. O.

Feb 7-72 Filed Temporary Restraining Order *re* Suzanne Spillman & Charles Spillman with endorsement by Judge Curtin denying application for a T. R. O.

Feb 17-72 Filed Temporary Restraining Order *re* Ellen Clark with endorsement by Judge Curtin denying application for a T. R. O.

Feb 18-72 Filed Pltfs'. Reply Memorandum of Law.

Feb 18-72 Filed Pltfs'. Affidavit of Service of Reply Memorandum of Law.

Feb 22-72 Filed Pltfs'. Exhibits.

Feb 22-72 Filed Exhibit 32.

Feb 22-72 Filed Exhibit 33.

Docket Entries.

Feb 22-72 Filed Exhibit 34.

Feb 22-72 Filed Exhibit 35.

Feb 22-72 Filed Exhibit 43.

Feb 22-72 Filed Exhibit 45.

Feb 22-72 Filed Exhibit 46.

Feb 22-72 Filed Pltfs'. Affidavit of Service of List of Exhibits.

Feb 24-72 Filed Affidavit of Elizabeth Wickenden.

Feb 24-72 Filed Affidavit of Service of Elizabeth Wickenden.

Feb 24-72 Filed Stipulation *re* filing briefs *amicus curiae* by National Assembly for Social Policy & Development Inc.

Feb 24-72 Filed Brief submitted by The National Assembly for Social Policy and Development, Inc.

Feb 24-72 Three Judge Court convenes: Present: Hon. James L. Oakes, CCA, Hon. John O. Henderson, DJ and Hon. John T. Curtin, DJ-Decision Reserved.

Mar 3-72 Filed Depositions of Stan Fleming, John Cooper & Bertha Heath (notice to Jean Coon & Messrs. O'Connor, Yeager, Koldin & Gambacorta).

Mar 6-72 Filed Brief on behalf of National Welfare Rights Organization, City Wide Coordinating Committee of Welfare Organizations, Upstate Welfare Rights Organization as *Amicii Curiae*.

Mar 13-72 Filed letter dated 3-9-72 to Judge Curtin from Jean M. Coon, Asst. Solicitor General, State of N. Y.

Mar 31-72 Filed Affidavit of Florence Reeder.

Docket Entries.

Mar 31-72 Filed Temporary Restraining Order *re* lorence Reeder-Curtin, *J.*

Apr 28-72 Filed Affidavit of Laura Duffy.

Apr 28-72 Filed Temporary Restraining Order *re* aura Duffy with endorsement by Judge Curtin denying ap-lication for a T. R. O.

May 8-72 Filed Affidavit of Etta Armstrong.

May 8-72 Filed Order to Show Cause *re* Etta Arm-rong-Curtin, *J.* ret 5-16-72; 5-17-72 Pltf. to submit emorandum.

May 17-72 Filed Defts'. Affidavit in opposition to emporary Restraining Order.

Jun 14-72 Filed Decision and Order denying ap-lication of Etta Armstrong for a temporary restraining or-er-Curtin, *J.* (notice & Copy to Messrs. O'Connor and efkowitz and to Ms. Balen).

Jul 28-72 Filed Decision and Order enjoining peration of state Work Rules as applied to recipients of id to Families with Dependent Children and directing that ederal Work Incentive Program procedures be followed nd further directing state to implement, within 30 days of ling this decision, a suitable means of informing recipients Home Relief of hearing rights were such recipients are grieved by a determination of employability, and further recting Clerk to enter judgment seven days after filing cision-James L. Oakes, C. J.; Henderson and Curtin, DJ otice & copy to Ms. Coon and Messrs. O'Connor, Freed, oldin and Stamm).

Aug 1-72 Filed Order amending order entered 7-28-72 hereby counsel for pltfs, are directed to prepare and sub-

mit judgment to court, upon notice to counsel for defts., within ten days of date of this order-Curtin, *J.* (notice & Copy to Ms. Coon and Messrs. O'Connor, Freed, Koldin and Stamm).

Aug 7-72 Filed Pltf's. Affidavit of Service.

Aug 25-72 Filed Order & Judgment declaring New York Work Rules unconstitutional insofar as they apply to applicants of AFDC; that from 60 days after date of this order Defts., are permanently enjoined & directed to cease all enforcement of NY Work Rules against recipients of & applicants for AFDC; directing delivery of checks for AFDC benefits by mail, such delivery to commence within 60 days of the date of this order; dismissing Pltfs'. First, Second & Third Causes of Action except that with respect to Pltfs'. Second Cause of Action, Defts., NYS, are directed to adopt & implement by 9-29-72 means of informing recipients of Home Relief, declared employable, of their right to a fair hearing; awarding Pltfs., costs by not attys. fees-Three Judge Court (Oakes, USCJ & Henderson & Curtin, DJ) (notice & copy to Ms. Coon and Messrs. O'Curtin, DJ) (notice & copy to Ms. Coon and Messrs. O'Connor, Freed, Koldin & Stamm).

Aug 25-72 JS 6 made.

Aug 28-72 Filed Pltfs'. Proposed Amendment to Pltfs'. Proposed Order.

Aug 28-72 Filed Pltfs'. Affidavit of Service.

Aug 30-72 Filed Pltfs'. Notice & Proposed Order.

Sep 5-72 Filed Affidavit of Julius C. C. Edelstein.

Sep 5-72 Filed Pltfs'. Affidavit of Service.

Sep 5-72 Filed Pltfs'. Motion to Amend Order (no ret. date)-9-19-72 submtd.

Docket Entries.

Sep 5-72 Filed Pltfs'. Affidavit of Service.

Sep 15-72 Filed Pltfs'. Affidavit.

Sep 19-72 Filed Civil Subpoena-served 9-14-72 George Demmon.

Sep 19-72 Filed Affidavit of Arthur L. Stern, III.

Sep 28-72 Filed Deft. New York State's Notice of Appeal to U. S. Supreme Court with affidavit of service on Messrs. O'Connor, Yeager, Pinsky and Stamm.

Oct 5-72 Filed Notice of Appeal to U. S. Supreme Court of Deft.—Intervenors Onondaga County Department of Social Services and its Commissioners John L. Lascaris with affidavit of service on Messrs. O'Connor, Yeager, Lefkowitz and Stamm.

Oct 11-72 Filed Affidavit of Richard S. Panebianco.

Oct 11-72 Filed Affidavit of R. Stephen Trosty.

Oct 11-72 Filed Copy of Ltr., from Michael A. O'Connor to Hon. John T. Curtin dtd. 10-11-72.

Oct 17-72 Filed Notice of Appeal to U. S. Supreme Court of Deft. Erie County Department of Social Services and its Commissioner George G. Sipprell with affidavit of service on Messrs. O'Connor, Yeager, Lefkowitz and Pinsky.

Oct 18-72 Filed Order amending Order of 8-25-72 by adding a paragraph after paragraph 2 and denying in all other respects Pltfs'. motion to amend order of 8-25-72-Three Judge Pltfs'. motion to amend order of 8-25-72-Three Judge Court (Oakes, USCJ & Henderson & Curtin, DJ) (noticed & copy to Messrs. O'Connor, Freed, Koldin, Erie Co. Atty. & Ms. Coon).

Docket Entries.

Oct 24-72 Filed Pltfs'. Notice of Appeal to U. S. Supreme Court with affidavit of service on Messrs. Lefkowitz, Stamm and Pinsky.

Oct 25-72 Filed Pltfs'. Bill of Costs taxed in the amount of $1,149.07 (notice to Messrs. O'Connor, Pinsky and Stamm and Ms. Coon).

Nov 14-72 Filed Order to Show Cause for Contempt of Court for failure to obey Judgment returnable Nov. 20, 1972, dtd. 11-13-72 Curtin *DJ.*

Nov 20-72 Filed Affidvt. of Gerald A. Norlander, atty. for Pltf. Evelyn Dillard.

Nov 20-72 Filed Affidvt. of Jean M. Coon, Asst. Solicitor Gen. NYS. in oppos. to pltfs. motion.

Nov 20-72 Return of Order to Show Cause. Adj. until such time as pltf's. Counsel submits letter to atty. for defts.

Dec 5-72 Filed Order that state defts. submit to Court and serve upon counsel for pltfs. no later than 12-18-72 afdvts. providing detailed comments on various points (7) & Counsel for pltfs may respond to afdvts. no later than 12-28-72 & upon receipt Court shall set date for hearing if appropriate. Curtin *DJ* Notice & copies to Mayer Freed, Jean Coon & Gregory Stamm.

Dec 20-72 Filed Defts. Affidavit pursuant to Judge Curtin's Order of 12-5-72.

Jan 5-73 Filed Letter dtd. 12-28-72 from Legal Aid Bureau in response to Order of 12-5-72 & Affidavit of Deft.

Jan 15-73 Filed Affidavit of Ira Bezoza on behalf of Doris Brown & Frances Glenn.

Complaint.

IN THE UNITED STATES DISTRICT COURT

For the Western District of New York

—o—

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

against

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants.

—o—

I.

NATURE OF CLAIM

1. Plaintiffs, individually and on behalf of all other persons similarly situated, seek to have this Court enjoin the enforcement of §§ 131 (4) and 164, as amended, and § 350-k of the New York Social Service Law and New York State Department of Social Services Administrative Letters No. 71 PWD-34 and 71 PWD-43 (together the law and regulations are designated the "New York Work Rules" herein). The New York Work Rules condition eligibility of "employable persons" for receipt of public assistance benefits under the federally assisted Aid to Families with Dependent Children

program ("AFDC"; New York terms this program "ADC") and Aid to Families with Dependent Children—Unemployed Parent program ("AFDC-U"; New York terms this program "ADC-U), and under the state's Home Relief program. Receipt of benefits is conditioned upon such recipients reporting semi-monthly to an office of the New York State Employment Service for "manpower services" and to pick up their checks. These Work Rules establish a presumption that recipients of such benefits are "employable." The New York Work Rules are challenged on the grounds that they are in conflict with Article VI, Clause 2 of the Constitution of the United States (the "Supremacy Clause"), with the Thirteenth and Fourteenth Amendments to the Constitution of the United States, and with the Social Security Act (42 U. S. C. §§ 601 *et seq.*) and the regulations promulgated thereunder. Plaintiffs seek an injunction against the enforcement of the New York Work Rules and a declaratory judgment that they are invalid as being in conflict with controlling constitutional, statutory and regulatory provisions.

II.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U. S. C. §§ 1343 (3) and (4), which provide for original jurisdiction in this Court of all suits authorized by 42 U. S. C. § 1983; and by 28 U. S. C. §§ 2201 and 2202, providing for jurisdiction in this Court of actions for declaratory judgments.

3. Plaintiffs' action for declaratory and injunctive relief and for damages is authorized by:

(a) 28 U. S. C. §§ 2291, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments;

(b) 42 U. S. C. § 1983, which provides redress for the deprivation under color of law of rights, privileges and immunities secured to persons within the jurisdiction of the United States by the Constitution and laws of the United States.

III.

PLAINTIFFS

4. Plaintiff Dolores Dublino is a citizen of the United States of the State of New York, residing in Erie County at 50 15th Street, Buffalo, New York. She is the mother of three minor children, ages 18, 14 and 13. Mrs. Dublino and her family received public assistance under ADC, and Mrs. Dublino is enrolled in the federal Work Incentive Program ("WIN"), a program of compulsory employment for AFDC and AFDC-U recipients established by federal law (42 U. S. C. §§ 101 (a) (15), (19) and 632 *et seq.*).

5. Plaintiff Doris Jimerson is an American Indian citizen of the United States and of the State of New York, residing in Erie County on the Cattaraugus Indian Reservation; her address is P. O. Box 53, Lantons, New York 14091. She is the mother of three children, ages 16, 14 and 11. Mrs. Jimerson and her family receive public assistance under the ADC program.

6. Plaintiff Virginia Michael is a citizen of the United States and of the State of New York, residing in Erie County at 3056 Wende Road, Alden, New York. She is the mother of three children, ages 19, 18 and 16. Mrs. Michael and her children receive public assistance under the ADC program. Mrs. Michael's husband, age 69, receives public assistance under the Aid to the Aged program, 42 U. S. C. §§ 401 *et seq.*

7. Plaintiff Janie Lee Phillips is a citizen of the United States and of the State of New York, residing in Erie County at 823 Virginia Street, Buffalo, New York. She receives public assistance under the state's Home Relief program.

8. Plaintiff Maria Marfoglia is a citizen of the United States and of the State of New York, residing in Erie County at 418 Busti Street, Buffalo, New York. Mrs. Marfoglia is the mother of six children, ages 16, 13, 12, 10, 8 and 4. She and her family receive public assistance under ADC.

IV.

CLASS

9. Plaintiffs bring this action on their own behalf, on behalf of their minor children on behalf of all others similarly situated, pursuant to Rules 23 (a) and 23 (b) (2) of the Federal Rules of Civil Procedure. The class which Plaintiffs represent are all persons similarly situated who are recipients of public assistance under the federally assisted ADC and ADC-U programs, and under the New York Home Relief program who have been or may be classified as "employable" under § 131 (4) of the New York Social Service Law, as amended, and the regulations issued pursuant thereto, or whose parents, guardians or caretakers have been so classified and are or will be required to travel to an office of the New York State Employment Service semi-monthly for "manpower services," and to pick up their assistance checks, and may be required to accept any proferred employment, including work on public works projects, mandated by N. Y. Soc. Serv. L. § 164, as amended, and § 350-k. The members of the class on behalf of whom Plaintiffs sue are so numerous as to make joinder impracticable. There are questions of law and fact common to all members of the

class. Plaintiffs challenge the validity of statutes and regulations which are applicable uniformly to all members of the class. The statutes are challenged on the grounds that they conflict with the Supremacy Clause of Article VI, Clause 2, the Thirteenth Amendment, and the Due Process and Equal Protection Clause of the Fourteenth Amendment to the constitution of the United States, and the Social Security Act, grounds applicable to all members of the class. Defendants have acted or refused to act on grounds generally applicable to the class. The claims of the Plaintiffs are typical of the claims of the members of the class. The Plaintiffs will fairly and adequately protect the interests of the members of the class.

V.

DEFENDANTS

10. Defendant New York State Department of Social Services (the "Department of Social Services") is the agency responsible for the administration of ADC and ADC-U in the State of New York and is responsible in part for the administration of the New York Work Rules.

11. Defendant George K. Wyman is Commissioner of the New York State Department of Social Services and is responsible for the administration and enforcement of public assistance programs in the State of New York.

12. Defendant New York State Department of Industrial Relations (the "Department of Industrial Relations"), is the agency of which the New York State Employment Service ("SES") is a subdivision. The New York State Employment Service is the agency charged with enforcing portions of the New York Work Rules.

13. Defendant Louis L. Levine is a Commissioner of the New York State Department of Industrial Relations and is

responsible for the administration of the program of that agency.

14. Defendant Erie County Department of Social Services (the "County Department") is the agency responsible for the administration of Home Relief, ADC and ADC-U in Erie County, New York and is responsible in part for the administration of the New York Work Rules.

15. Defendant George G. Sipprel is the Commissioner of the Defendant Erie County Department of Social Services.

16. N. Y. Soc. Serv. L. § 131 (4) provides that no public assistance be given to any "employable person" who has "not registered with the nearest local employment agency of the Department of Labor or has refused to accept employment in which he is able to engage." In 1971 this section was amended (effective July 1, 1971) to redefine "employable persons" and to change the procedure for receipt of benefits:

> "For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available.

notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to an participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department."

17. Under § 131 (4), a person is deemed to have refused employment if he:

"a. fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the application is able to engage, or

"b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

"c. wilfully fails to report to such office the result of a referral to employment, or

"d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be

reported immediately to the social services district by such employment office."

18. To implement these provisions, the Department of Social Services and the County Department have promulgated regulations requiring Plaintiffs and the members of their class to pick up their assistance checks semi-monthly at the main SES office in Erie County.

19. Prior to the effective date of the new Work Rules, Recipients of ADC and ADC-U and of Home Relief have received their public assistance checks by mail, either monthly or semi-monthly; recipients not deemed "employable" will continue to so receive their checks.

20. Defendants and the New York Legislature have defined the minimally adequate monthly subsistence standard for the basic needs, such as food, clothing and transportation, for families receiving Home Relief, ADC and ADC-U as follows (N. Y. Soc. Serv. L. § 131-a):

Number of Persons in Household

1	2	3	4	5	6	each additional
					329	
$84	$134	$179	$231	$284	$326	$45

Under recent amendments to § 131-a, maximum payments to such families have been set at 90% of these minimum amounts. N. Y. Soc. Serv. L. § 131-a (3) (b). The monthly amount allotted in these maximum payments for transportation expenses as approximately $1.50 per person. Other than transportation for medical assistance, reimbursed in the state's medicaid program, no provision is made under state

law for additional transportation allowances for Home Relief, ADC or ADC-U applicants or recipients.

21. New York, in order to receive funds for the AFDC and AFDC-U programs, is required by the Social Security Act, 42 U. S. C. §§ 601 *et seq.* to have formulated a "State Plan" for said program in conformity with the provisions of the Social Security Act and is further required to establish a single State agency to administer such Plan.

22. Congress, in the 1967 Amendments to the Social Security Act, established the Work Incentive Program ("WIN") for appropriate recipients of AFDC and AFDC-U. See 42 U.S.C. §§ 602(a)(15), (19) and 632 *et seq.* WIN must provide *inter alia:* for exemption of certain people from a determination that they are appropriate to be referred to work or training (42 U. S. C. § 602 (19) (A)); for child care services (42 U. S. C. § 602 (15) (A) (i)); for testing and counseling (42 U. S. C. § 633 (a)); for the development of an "employability plan" leading to self-support (42 U. S. C. § 633 (b)); for the applicable minimum wage for the particular work concerned (42 U. S. C. § 633 (e) (4)); for reasonable work conditions (42 U. S. C. §§ 633 (f) (i) and (3)); for workmen's compensation (42 U. S. C. § 633 (f) (4)); and for the continuation of the Aid to Dependent Children grant to other members of the assistance unit after a "non-good cause" refusal to accept employment (42 U. S. C. § 602 (19) (F)).

23. In 1971, the Legislature amended Soc. Serv. L. § 164 and added new § 350-k to require each locality to establish public works programs. Home Relief recipients are referred to programs under § 164, and ADC and ADC-U recipients are referred under § 350-k. Recipients can be required to work in these programs, and their compensation is the public

assistance benefit to which they are normally entitled. Although these sections differ in some respects, neither provision sets standards for the type of work to be provided in these programs, nor for the wages to be paid to recipients.

24. Plaintiff Dolores Dublino has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4), has reported to the County Department to obtain an identification card, and has been scheduled for an appointment on July 6, 1971 to pick up her check at the main SES office in Buffalo, an agency of the Defendant Department of Industrial Relations, which office is approximately three miles from her home. Plaintiff Dublino is presently enrolled in the federal WIN program and is scheduled to register on July 6, 1971, the same day as her appointment at SES, for a modern office training class at Bryant and Stratton Business Institute, 1028 Main Street, Buffalo, New York.

25. Plaintiff Dublino was referred to this WIN training program by WIN personnel in the employ of the Defendant Department of Industrial Relations. Mrs. Dublino justifiably fears that conflicting appointments may prevent her registration in desired courses of the training program and that her semi-monthly appointment to pick up her check will interfere with other training. The distance between Bryant and Stratton Business Institute and the SES office is approximately six miles. The trip between these two points will involve at least one bus transfer and will take at least 30 minutes travel time on each direction.

26. Plaintiff Doris Jimerson has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4), has received her identification card, and has been scheduled for an appointment on July 14, 1971, between 10:15 and 10:45 A. M. to pick up her check at the Buffalo SES office.

Mrs. Jimerson lives on a dirt road 6/10 of a mile from the nearest paved highway, and 4 miles from the nearest bus stop, at Gowanda, New York. Her home is 32 miles from Buffalo. Mrs. Jimerson has called a taxi company to inquire about transportation to Gowanda, and has been told that the taxi will cost $6.00 each way. Bus fare to Buffalo is $1.15 one way.

Mrs. Jimerson is not yet sure there is a bus which would get her to Buffalo on time for her appointment, and it may be necessary to leave the night before. In any case, the trip will take the better part of a day.

27. Mrs. Jimerson has been informed by her caseworker that her oldest child, Michele, 16, who is a high school student, will be classified as "employable" for the summer and thereby will also be required to report to Buffalo twice monthly for "manpower services."

28. Although Mrs. Jimerson has been informed that she will receive a "special check" on July 1 to tide her and her family over until she receives her regular check at the SES office on July 14, this "special check" will not include an allotment for rent. Mrs. Jimerson's rent is due on July 1 and she is afraid that her landlord will take action against her for failure to pay her rent when due.

29. Plaintiff Virginia Michael has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4), has reported to the County Department in Buffalo to obtain an identification card, and has been scheduled for an appointment on July 14, 1971, to pick up her check at the Buffalo SES office. Buffalo is 22 miles from Mrs. Michael's home; she will have to take an 8:20 A. M. bus to Buffalo, and will have to wait until 2:30 P. M. for the return bus to her home in Alden, New York, arriving at 3:40 P. M. Round

trip bus fair from Alden is $1.40 and, because of the schedule, Mrs. Michael will have to purchase lunch in Buffalo. The "flat grant" for Mrs. Michael under ADC is approximately $1.65 per day.

30. Mrs. Michael has been informed by her caseworker that her two oldest children, ages 19 and 18, both high school graduates, will also be required to report to the Buffalo office of SES twice monthly, necessitating a further high expenditure of their benefits.

31. Although Mrs. Michael has been informed that she will receive a "special check" on July 1 to tide her and her family over until she receives her regular check at the SES office on July 14, this "special check" will not include an allotment for rent. Mrs. Michael's rent is due on July 1, and she is afraid that her landlord will take action against her for failure to pay her rent when due.

32. Plaintiff Janie Lee Phillips lost her leg in 1965, in a farm accident. She is fitted with an artificial limb, but because of its heaviness she has great difficulty in walking more than 100 yards. Plaintiff Phillips has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4) and has reported to the County Department to obtain an identification card. Because of her handicap, Plaintiff Phillips had to take a taxi to the County Department. She will also have to take a taxi to the SES office, where she is required to report on July 12.

33. Plaintiff Phillips pays rent for each month on the 16th of the month. Although she will receive her check, including one half of her rent allotment, on the 12th of July, she will not receive her second rent allotment until July 27, her next appointment at SES. Plaintiff Phillips receives $72

in public assistance every two weeks; her rent is $50.00 per month. Mrs. Phillips is afraid that she will be unable to pay her rent when due and that her landlord will take action against her.

34. Plaintiff Maria Marfoglia has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4) and has reported to the County Department to obtain an identification card. At the time she was required to so report, Mrs. Marfoglia had no money for bus fare or for babysitters, and so she and her six children walked three miles to the offices of the County Department. Mrs. Marfoglia is concerned about the requirement that she travel to the SES office every two weeks and also about the possibility that she may be required to accept employment. Mrs. Marfoglia feels that adequate child care is not available for her children. Her sister cannot care for Mrs. Marfoglia's children, being busied with her own five children, and Mrs. Marfoglia's mother, age 67, is ill. Mrs. Marfoglia, who is divorced, does not want to leave her children in the care of a stranger, as she feels this will have a detrimental effect on their upbringing. Mrs. Marfoglia has been scheduled for an appointment on July 2, 1971 to pick up her check at the SES office in Buffalo, some two miles from her home.

35. None of the above Plaintiffs received any notice prior to their receipt of the letter informing them that they had been deemed "employable." No discussion had been had with any caseworker or other official as to any Plaintiff's availability for work or as to any problems which might arrise as a result of the obligations incurred by them because of their being found "employable." Each of the Plaintiffs is under immediate threat of referral to a work project by reason of the determination that she is "employable".

AS AND FOR A FIRST CAUSE OF ACTION

36. The New York Work Rules violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in that they arbitrarily and discriminatorily establish onerous requirements and sanctions as to Plaintiffs and the class they represent different from those applicable to those recipients not found "employable." These Work Rules work an undue hardship on Plaintiffs and their class, subjecting them to possible eviction from their homes and requiring them to expend significant amounts of their vitally needed public assistance grants for travel and other arrangements necessary to comply with the requirements of the Rules. These requirements, applied only to those recipients deemed "employable," are an unreasonable discrimination of violation of the Equal Protection Clause.

AS AND FOR A SECOND CAUSE OF ACTION

37. The New York Work Rules violate the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, in that they are so vague, due to their absence of standards, as to promote arbitrary administration and further, are too vague to adequately appraise Plaintiffs and the members of their class of what is expected of them, and fair to provide adequate procedural safeguards to protect the rights of the Plaintiffs and the members of their class.

AS AND FOR A THIRD CAUSE OF ACTION

38. The New York Work Rules violate the Thirteenth Amendment to the Constitution of the United States, in that they are so vague and lacking in standards as to establish a system of involuntary servitude within the meaning of said Amendment.

AS AND FOR A FOURTH CAUSE OF ACTION

39. The New York Work Rules are invalid insofar as they establish a work program for recipients of ADC and ADC-U in direct conflict with the Work Incentive Program, as established by the Social Security Act, and, consequently, are invalid because they invade an area preempted by federal statute in violation of the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2.

AS AND FOR A FIFTH CAUSE OF ACTION

40. The New York Work Rules are invalid insofar as they condition receipt of ADC and ADC-U benefits by otherwise eligible persons on the fulfillment of conditions not present in the Social Security Act. These work rules set up an additional condition of eligibility inconsistent with 42 U. S. C. § 602 (a) (10), which provides that "a state plan for aid and services to needy families must . . . provide that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals."

AS AND FOR A SIXTH CAUSE OF ACTION

41. The New York Work Rules are invalid because they are inconsistent with the requirements of 42 U. S. C. § 602 (a) (3) that the State establish a single state agency to administer the Plan required under the Act.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully pray that this Court:

1. Assume jurisdiction of this cause and set this cause down for hearing.

2. Enter a declaratory judgment pursuant to 28 U. S. C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the New York Work Rules

a. Violate and are repugnant to the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

b. Violate and are repugnant to the Thirteenth Amendment to the Constitution of the United States.

c. Are inconsistent with and have been preempted by the Social Security Act, 42 U. S. C. §§ 601 *et seq.*

3. Issue a temporary restraining order

a. Restraining the Defendants from requiring Plaintiffs and the members of their class to pick up their public assistance checks at an office of the State Employment Service and from taking further steps to enforce the New York Work Rules.

b. Ordering the Defendants to issue immediately by mail the amounts normally due to Plaintiffs and the members of their class as their semi-monthly public assistance grant, including rent allowance, less any amount already issued in the form of "special check."

4. Enter a preliminary injunction pending the final determination of this matter and, thereafter, a permanent injunction prohibiting, restraining and enjoining Defendants, their successors in office, agents and employees from en-

forcing, applying or implementing the aforesaid New York Work Rules.

5. Award Plaintiffs damages, and their costs herein, and any additional or alternative relief as the Court may deem to be just and appropriate.

Respectfully submitted,

LEGAL AID BUREAU OF
BUFFALO, INC.,
NEIGHBORHOOD LEGAL SERVICES,
481 Swan Street,
Buffalo, New York 14204,
Michael A. O'Connor,
Of Counsel,

Dennis R. Yeager,
E. Richard Larson,
Mayer G. Freed,
401 West 117th Street,
New York, New York 10027,
Attorneys for Plaintiffs.

Decision Granting Motion for Class Action and Ordering Convening of a Three-Judge Court.

UNITED STATES DISTRICT COURT

Western District of New York

—o—

DELORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants.

Civil No. 1971-306.

—o—

Appearances:

Michael A. O'Connor, Buffalo, New York, and Dennis R. Yeager, E. Richard Larson, and Mayer G. Freed, New York, New York, for Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Jean M. Coon, Assistant Attorney General, of Counsel), for defendants Wyman and Levine.

Mario C. Gambacorta, Assistant County Attorney, County of Erie, for defendant Sipprell.

Decision Granting Motion for Class Action and Ordering Convening of a Three-Judge Court.

This is an action challenging the constitutionality of the recent amendments to the New York Social Welfare Law, and the departmental regulations adopted pursuant to the amendments, all commonly known as the New York Work Rules. The contested provisions are Sections 131(4) and 164, as amended,[1] and 350-k[2] of the Social Welfare Law and Department of Social Services Administrative Letters, Numbers 71 PWD—34[3] and 71 PWD—43[4]. In brief, the Work Rules establish a presumption that certain recipients of public assistance under some state welfare programs are employable and require such recipients to report semi-monthly to the New York State Employment Service to pick up their assistance checks and accept referral to employment positions, including employment on public works projects.

The plaintiffs have each been notified that they have been determined to be employable and have been directed to report to the State Employment Service. They sue on behalf of themselves and their minor children, and seek to proceed, pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure, as representatives of a class composed of all persons receiving New York public assistance grants who have

---

1 Subdivision four of Section 131 was amended by Chapter 102, Laws of New York, 1971.

Section 164 was amended by Chapter 101, Laws of New York, 1971.

2 Section 350—k was added as a new section by Chapter 101, Laws of New York, 1971.

3 Administrative Letter No. 71 PWD—34 provides as follows:

Omitted in printing—printed as Exhibit B to answer of State Defendants.

4 Administrative Letter No. 71 PWD—43 provides as follows:

Omitted in printing—printed as Exhibit C to answer of State Defendants.

been or are subject to the operation of the above statutes and regulations.

The relief sought is a judgment declaring the statutes and regulations unconstitutional under the Thirteenth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and invalid under the Supremacy Clause of the Constitution of the United States, on the ground that they conflict with the provisions of the Social Security Act of 1935 (42 U. S. C. §§ 601 *et seq.*). Plaintiffs further seek a temporary order restraining the enforcement of the Work Rules pending the final determination of this matter, and a permanent injunction thereafter.

The defendants have moved to dismiss the complaint on the grounds that it has failed to state a cause of action and that the federal court should exercise its discretion to abstain from deciding the constitutional issues presented here while the plaintiffs exhaust their state administrative remedies pursuant to Section 353, New York Social Welfare Law. At this time, the defendants' motion must be denied. See *Woolfolk v. Brown*, 325 F. Supp. 1162 (E. D. Va. 1971). With respect to the question of federal abstention, as will be apparent from the discussion below, the defendants' motion is premature.

Three questions remain: whether the plaintiffs should be permitted to proceed as a class, whether a three-judge panel, pursuant to Title 28, United States Code, Sections 2281 and 2284, should be certified, and whether a preliminary injunction should issue.

A class action under Rule 23(b) (2) is proper if the prerequisites of Rule 23(a) are satisfied and

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. (Rule 23(b)(2).)

The class plaintiffs seek to represent is numerous, with joinder impracticable, and there are common questions of law. The claims presented are typical, and will be fairly represented by the named plaintiffs. The court finds that this is an appropriate class action, and plaintiffs are accordingly permitted to proceed as representatives.

In this circuit, notice to absentee members of the class is required. *Eisen v. Carlisle & Jacquelin*, 391 F. 2d 555 (2d Cir. 1968). They should be advised of the pendency of the suit and of their right to be excluded from the final judgment. Given the indigency of the plaintiffs and class, the defendants should provide the notice of this action. Individual notification is unnecessary. "In the degree that there is cohesiveness or unity in the class and the representation is effective, the need for notice to the class will tend toward a minimum." Advisory Committee Notes, Proposed Rules of Civil Procedure, 39 F. R. D. 69, at 106 (1966). Defendants are directed to post notices, in appropriate form,[5] at a con-

---

5 A suggested form would be as follows:

NOTICE

The New York Work Rules (Sections 131(4), 164, and 350—k of the New York Social Welfare Law) are currently the subject of constitutional litigation in the United States District Court, Buffalo, New York, 14202. All public assistance recipients subject to these statutes are now deemed to be plaintiffs in this lawsuit.

(Footnote continued on following page)

spicuous location in each of the offices of the Department of Social Services and State Employment Service which are regularly visited by members of the class. The notice should further indicate that persons wishing to be excluded from the effect of a final determination in this matter should notify this court no later than September 1, 1971. In further consideration of the members of the class, the notices should be written in English and Spanish.

Where state legislation is sought to be enjoined as violative of the Constitution of the United States, a three-judge panel is usually required before a decision on the merits can be reached. The district judge must determine whether the constitutional questions presented are substantial, whether the complaint alleges a basis for equitable relief, and whether the case otherwise comes within the requirements of Title 28, United States Code, Sections 2281 and 2284. See *Idlewild Bon Voyage Liquor Corp. v. Einstein*, 370 U. S. 713 (1962). The court finds that this action meets the *Idlewild* test, and therefore the Honorable Chief Judge of the United States Court of Appeals for the Second Circuit is hereby requested to convene a three-judge court to hear and determine this cause.

(Footnote continued from preceding page)

Counsel for the individual named plaintiffs who are representing the class are: Michael O'Connor, Esq., 481 Swan Street, Buffalo, New York 14202, and Dennis Yeager, Esq., E. Richard Larson, Esq. and Mayer G. Freed, Esq., 401 West 117th Street, New York, New York 10027.

Any member of the class who wishes to be excluded from the effect of a final determination in this matter should express his choice *in writing* on or before September 1, 1971. Such letters should be addressed to: Clerk, United States District Court, 68 Court Street, Buffalo, New York 14202.

Dated:.....

Finally, plaintiffs seek a temporary order restraining the enforcement of the challenged state provisions with respect to each member of the class. Title 28, United States Code, Section 2284(3). This motion is denied. There is not sufficient evidence, by way of affidavit or otherwise, before the court to demonstrate irreparable injury to all members of the class.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: August 6, 1971.

Answer on Behalf of State Defendants.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

The defendants New York State Department of Social Services, George K. Wyman, New York State Department of Labor, and Louis L. Levine, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, for their answer to the complaint herein:

1. Admit the allegations contained in paragraphs 11, 14, 15, 16, 17, 19, 21, and 22 of the complaint herein.

2. On information and belief, admit the allegations contained in paragraphs 4, 5, 6, 7, 8, 24, 27, 29, 30, and 32 of the complaint herein. The source of their information and the grounds for their belief are affidavits of the plaintiffs sub-

mitted to the Court in support of an application for a Temporary Restraining Order.

3. Deny each and every allegation contained in paragraphs 36, 37, 38, 39, 40, and 41 of the complaint herein.

4. As to the allegations contained in paragraph 1 of the complaint herein, admit those allegations are the stated purpose of the action and state the claims of the plaintiffs, but deny any conclusions as to the validity of the claims contained therein which may be drawn from those allegations.

5. As to the allegations contained in paragraphs 2 and 3 of the complaint herein, admit that the jurisdiction of the Court is invoked in this action as stated, but deny any conclusions as to the validity of the claims therein stated which may be drawn from those allegations.

6. As to the allegations contained in paragraph 9 of the complaint herein, admit that the action is brought as stated, but deny any conclusions as to the validity of the claims therein stated which may be drawn from the allegations contained therein and further deny that plaintiffs may properly bring this action as a class action on the ground that questions of law and fact affecting only the individual plaintiffs predominate over questions of law or fact common to the whole class as stated.

7. As to the allegations contained in paragraph 10 of the complaint herein, admit the allegations thereof except allege that the New York State Department of Social Services is the sole final authority for the administration of the New York Work Rules.

8. As to the allegations contained in paragraph 12 of the complaint herein admit the allegations thereof, except allege that the correct title of the Department is the New York

State Department of Labor and that the New York State Employment Service is the agency charged with implementing a portion of the Work Rules, but is not a final enforcing or administering authority.

9. As to the allegations contained in paragraph 13 of the complaint herein, admit the allegations thereof, except allege that defendant Louis L. Levine is the Industrial Commissioner of the State of New York and is the chief executive officer of the New York State Department of Labor.

10. As to the allegations of paragraph 18 of the complaint herein, admit the allegations thereof, except that the State Department of Social Services regulations are general statewide regulations and do not refer specifically to the individual plaintiffs herein or apply solely to Erie County.

11. As to the allegations contained in paragraph 20 of the complaint herein, admit the allegations thereof, except allege that the flat grant provided under Social Services Law, § 131—a does not include housing, fuel, medical expenses or other specific types of expenses as provided in the regulations of the Department (18 NYCRR § 352.1), and further allege that the standard of need for a family of 6 is $329 per month (not $326), and further allege that transportaion allowances have been provided by regulation for persons engaged in Public Works projects under the New York Work Rules and can be provided by Department regulation in other instances where need is shown, and further allege that the computation of basic needs does not include specific amounts for items such as transportation, but is computed from Federal figures establishing low income levels converted to New York State costs which figures include an annual allowance for transportation amounting to approximately $80 for a family of four.

12. As to the allegations contained in paragraph 23 of the complaint herein, admit the allegations thereof, except allege that the provisions of Section 350—k are not being applied to ADC and ADC—U recipients and that only Home Relief recipients are being referred to public works projects, and further deny that the statutes do not set standards for type of work provided or wages to be paid to recipients.

13. As to the allegations contained in paragraph 25 of the complaint herein, admit the allegations thereof, except allege that the correct title of the Department is the Department of Labor, and deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

14. As to the allegations contained in paragraph 26 of the complaint herein, admit the allegations thereof on information and belief, except deny that plaintiff's appointment could not be scheduled so that she could make the trip to Buffalo in one day.

15. As to the allegations contained in paragraph 28 of the complaint admit the allegations thereof, on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

16. As to the allegations contained in paragraph 31 of the complaint herein, admit the allegations thereof, on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

17. As to the allegations contained in paragraph 33 of the complaint herein, admit the allegations thereof, on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

18. As to the allegations contained in paragraph 34 of the complaint herein, admit the allegations thereof on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

19. As to the allegations contained in paragraph 35 of the complaint herein, deny knowledge or information sufficient to form a belief as to the allegations contained therein, except deny that ADC or ADC—U recipients may be referred to public works projects under the Departmental regulations.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

20. Prior to the enactment of Chapter 102 of the Laws of 1971, a copy of which is attached hereto as Exhibit A, Social Services Law, § 131 required "employable" recipients of public assistance to report semi-monthly to the nearest office of the State Employment Service for job referral. That section also contained an exemption from the definition of employable of persons unable to work by reason of age, health, or other disability. Chapter 102 amended that Section in two respects. First, it clearly defined the persons who would be deemed not to be employable, as those persons rendered unable to work by reason of illness, significant and substantial physical or mental incapacity, advanced age, full-time attendance at school in the case of a minor, full-time satisfactory participation in an approved program of vocational training or rehabilitation, or the need of such person to provide full-time care for other members of the household for whom care is otherwise not reasonably available. Thus, for the first time, the statute actually con-

tained a definition and standard for determining which public assistance recipients were or were not employable. Contrary to the allegations of the plaintiffs, Chapter 102 established the first statutory standards for that determination and established standards which are on their face reasonable and fair.

21. Secondly, Chapter 102 provided that "employable" public assistance recipients would, at the time of their reporting for job referral or employment counseling, have their assistance checks personally delivered to them. Not only would that system provide an accurate method of determining whether or not employable recipients were in fact reporting for job referral or counseling, but also would assure those recipients of the receipt of their checks on a day certain, without having to rely on the uncertainty of mail deliveries, but would also tend to alleviate some of the problem of check thefts. Recipients considered non-employable by reason of participation in a program of vocational training or rehabilitation are also required to report to the offices of the State Employment Service for job counseling and for evaluation of their progress in the training or rehabilitation programs. At the time of such reporting they are also to have their assistance checks delivered to them. Chapter 102 has been implemented by Administrative Letters Nos. 71 PWD-34, 71 PWD—43 and 71 PWD—52, copies of which are attached hereto as Exhibits B, C, and D. These letters establish reasonable, fair and adequate standards for the determination of employability and the procedures for referral of employables for job referral and services.

22. Chapter 101 of the Laws of 1971 (a copy of which is attached hereto as Exhibit E) amended Social Services Law

§ 164 to require each social services district to provide for the establishment of Public Works Projects for the assignment of employable persons receiving Home Relief. Such programs would be established either directly by the social services district or, by contract, by the State Industrial Commissioner. Public Works Projects established under the law must meet State and Federal requirements and are to be provided for the conservation of work skills and/or the development of new skills of recipients of aid. Persons assigned to such projects must be employable under the terms of Social Services Law, § 131, as amended, and provision must also be made to permit such persons to seek regular employment or to secure appropriate training or retraining where available. Chapter 101 has been implemented by Administrative Letter 71 PWD—48, a copy of which is attached hereto as Exhibit F.

23. Both Chapters 101 and 102 have been implemented by Departmental regulations filed with the Secretary of State of the State of New York on July 30, 1971, a copy of which is attached hereto as Exhibit G. The Administrative Letters and Departmental regulations provide definite, reasonable, adequate and fair standards for administration of the programs and accord to the plaintiffs and other recipients of assistance subject to those regulations due process of law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

24. This Court should abstain from a determination of the issues raised in the complaint until plaintiffs have pursued administrative remedies available to them under State law. The complaint and the affidavits in support of the motion for a Temporary Restraining Order raise issues as to

whether or not plaintiffs have been properly classified as employable and as to whether or not alleged hardships cannot be alleviated by rescheduling of appointments or by other administrative determinations. If plaintiffs' individual situations may be so resolved then the constitutional issues need not be reached for a determination of the merits of plaintiffs' complaints.

WHEREFORE, defendants respectfully request that this Court enter a judgment dismissing the complaint herein and declaring Chapters 101 and 102 of the New York Laws of 1971 to be constitutional and valid.

Dated: August 13, 1971.

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York,
Attorney for State Defendants,
The Capitol,
Albany, New York 12224,
(518) 474-7173,
By Jean M. Coon,
Assistant Attorney General.

Exhibit A Attached to Answer.

Exhibit A.

STATE OF NEW YORK

(Imprint)

6395

1971-1972 Regular Sessions

IN SENATE

April 6, 1971

Ch. 102

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT

To amend the social services law, in relation to employable recipients of public assistance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision four of section one hundred thirty-one of the social services law, as amended by chapter one hundred eighty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

4. No assistance or care shall be given to an employable person who has not registered with the nearest local em-

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

ployment agency of the department of labor or has refused to accept employment in which he is able to engage.

A person shall be deemed to have refused to accept such employment if he:

a. fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. wilfully fails to report to such office the result of a referral to employment, or

d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

[This shall not apply to persons who cannot register with such employment agency because of age, health or other disability.]

For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced

age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department.

§ 2. This act shall take effect July first, nineteen hundred seventy-one.

Exhibit B Attached to Answer.

Exhibit B.

STATE OF NEW YORK

Department of Social Services
1450 Western Avenue
Albany, New York 12203

George K. Wyman
Commissioner

Transmittal No.: 71 PWD—34
Date: May 13, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services.

Subject: Employable Recipients of Public Assistance.

Distribution: B—5 Public Assistance Executive and Supervisory Staff.

Chapter 102 of the Laws of 1971, effective July 1, 1971, amends Section 131.4 of the Social Services Law. The amendments contain three significant additions:

1. The statutory definition of "employable" is as follows:

A person shall be deemed employable if such person is not rendered unable to work by:

(a) illness of significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services.

(b) advanced age.

(c) full-time attendance at school in the case of a minor, in accordance with provisions of the Law. (N. B. this is interpreted not to include emancipated minors.)

(d) full-time, satisfactory participation in an approved program of vocational training or rehabilitation.

(e) the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care.

2. A person assigned to and participating in a public works project under the provisions of sections 164 or 350—k of the Social Services Law shall be deemed to be employable but not employed.

3. Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the Division of Employment of the State Department of Labor.

The Department, in cooperation with the State Labor Department, is presently developing regulations, policies and procedures to implement this Law as of July 1, 1971. As these are developed, we will further advise you.

In order that each local social services district have as much time as possible to prepare for the orderly im-

plementation of the Law, the following steps should be initiated immediately so that they are completed by no later than June 30, 1971:

A. Each social services district shall immediately review its undercare caseload to insure that its roster of HR and ADC employables is up to date. The roster shall be kept current by additions and deletions as they occur.

B. In addition, the following type cases shall be separately identified:

1. The "employable" not deemed to be employable because of participation in an approved program of vocational training or rehabilitation; *i.e.*, WIN, MDTA, etc. (See Bulletin 26, page 7 for other examples). If the "employable", person is not the grantee, his relationship shall be specified.

2. The grantee is "employable", and there are one or more other "employables" in the family. The relationship of the other "employables" to the grantee shall be specified.

3. The grantee is not "employable", but there are "employables" in the family; *i.e.*, an instance of a disabled ADC mother with an "employable" 17 year old son; etc. The relationship of the "employable" to the grantee shall be specified.

C. In each case where there is an "employable" male head-of-family, he shall be made grantee for the family grant, if he is not presently the grantee.

D. Since the "employable's" Social Security Account number will be used as an identifier, all individuals age 14 and over are required to possess a Social Security Account number.

Exhibit C Attached to Answer.

Methods and procedures for securing a Social Security Account number for those individuals not now possessing one will be released within the next few days.

GEORGE K. WYMAN,
Commissioner.

Exhibit C.

STATE OF NEW YORK

Department of Social Services
1450 Western Avenue
Albany, New York

GEORGE K. WYMAN
Commissioner

Transmittal No.: 71 PWD—43
Date: June 9, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services.

Subject: Work Reform: Policy and Procedure for Referral of Unemployed Employables to the New York State Department of Labor for Check Delivery and Receipt of Employment Services.

Distribution: B—2 General Administrative Staff (Special).

As you know, the Laws of 1971 place a renewed and expanded emphasis on restoring all employable recipients of public assistance to employment in the regular economy. Accordingly, all unemployed employable persons applying for

or receiving public assistance are not only required to register at the New York State Employment Service district office in their community, and report there regularly for appropriate employment counseling services and job referral, but, effective July 1, they will also pick up their assistance checks there. The penalty for not cooperating in this procedure is ineligibility for public assistance whether the individual is the grantee head of family, single person living alone, or non-grantee non-head of family.

The Law places the full responsibility for the determination of employability and for the required action in applying sanctions for failure to cooperate in the process on the local social service agencies. It is the intent of the Legislature that the services required to implement the various provisions of the Law be a top priority activity in social service agencies and that the necessary monitoring of the program to provide the report data necessary for evaluation be an inherent part of the entire process.

To assist you in implementing and evaluating the legal requirements, this Department has had a series of discussions and clearances with the New York State Department of Labor and the Social Security Administration. We have reached agreement regarding the basic components and a standardized procedure which will assure uniform, effective processing and reporting operations state-wide. Obviously, it will be necessary for you to establish close working relationships with the local offices of these agencies to assure that everything possible is done to achieve an orderly work flow so that the objective of the law to restore employable recipients to employment may be accomplished without confusion, or harassment to the recipients. Because of the wide variations in workloads throughout the State, some minor adjustments in the procedures outlined may be necessary at

the local level. It is important that these do not interfere in any way with the required referral process or reporting requirements.

I also believe that there is need for planned local publicity around these new requirements of the Law and the procedures for implementing them. I urge you to utilize all available community resources to help you to promote a full understanding of this important legislation.

This Department is planning a series of special meetings around the State with you and representatives of your staff to explain and clarify the policy and procedural material reflected in this Administrative Letter. If you have any questions we will be happy to help you resolve them. Representatives from the Department of Labor will also be participating with staff of this Department in these meetings. I am certain that you will give this matter your immediate attention so that this intensified effort toward employment can be operative by July 1.

GEORGE K. WYMAN,
Commissioner.

POLICIES AND PROCEDURES FOR REFERRAL OF UNEMPLOYED EMPLOYABLES TO THE NEW YORK STATE DEPARTMENT OF LABOR.

I. A. Introduction.

1. Legal Basis.

Administrative Letter 71 PWD—34 provided preliminary information concerning amendments to

Section 131.4 of the Social Services Law. Subsequently, Chapter 298 of the Laws of 1971 amended the same section of the Social Services Law to provide that:

(a) Recipients are required to report *semi-monthly* to the Employment Service.

(b) The Social Services Department, as well as the recipient, is charged with the responsibility to exercise diligent effort to secure child care for potentially employable recipients.

2. Purpose.

The purpose of Section 131.4 is to restore *all* employable recipients of public assistance to employment in the regular economy. To accomplish this, the Law specifies certain responsibilities to be met by all social services districts and recipients, as follows:

(a) Social services districts are required to assess the employability of all applicants and recipients between the ages of 16 through 64 and to determine, in accordance with specific criteria (See Section B), those recipients who are employable and unemployed.

(b) The State Employment Service is responsible for the provision of manpower services and job placement for all recipients who are deemed employable.

(c) All unemployed employable grantees shall report to the New York State Employment Service on a semi-monthly basis for manpower services, certification, and receipt of their regular semi-monthly grant.

(d) All unemployed employable non-grantees are required to report to the State Employment Service on a semi-monthly basis for manpower services and certification.

(e) All unemployable persons in vocational training or rehabilitation are required to report to the State Employment Service on a semi-monthly basis for a review of their progress in training, necessary manpower services, and receipt of their regular semi-monthly grant of assistance, if they are the grantee.

B. Department Policy.

1. Definition of Employable.

All ADC or HR applicants or recipients age 16 and over shall be deemed employable except by reason of:

(a) Full-time employment;

(b) Attendance at school full-time for a minor other than an emancipated minor;

(c) Attendance full-time in grade or high school for an emancipated minor;

(d) Full-time, satisfactory participation in an approved program of vocational training or rehabilitation, which shall include but not be limited to participation in the Work Incentive Program and a two-year college program with a specific vocational objective;

(e) Part-time employment to the extent permitted by medical verification, or because of inability to secure adequate care for children or other incapacitated members except on a part-time basis;

Exhibit C Attached to Answer.

(f) Mental or physical illness or incapacity which has been medically verified to be of a significant or substantial nature so as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it has been verified that the individual would be potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable only when determined medically to be free of drug use, or participating in a methadone maintenance program or rehabilitation program; or,

(g) The need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care.

2. Social Security Numbers.

All persons age 14 and over shall be required to have a social security account number.

3. Medical Information.

Medical verification of illness or incapacity shall include information about:

(a) The anticipated duration of unemployability;

(b) The persons's limitations, if any, as to the kinds of work in which he may engage and the maximum number of hours which he may work; and,

(c) What medical treatment, if any, is indicated to correct or ameliorate his condition.

Exhibit C Attached to Answer.

4. Employability of Drug Addicts.

(a) Persons with a known history of drug use are not to be referred to the State Employment Service in the absence of a medical statement of freedom from drug use or medical verification of the individual's participation in a methadone maintenance program or rehabilitation program.

(b) If an individual has a history of drug use and is unable to provide necessary medical verification to meet the requirements of the State Employment Service, he shall be referred to a treatment agency. If he is known to or has a preference for a particular recognized agency, his choice shall be given consideration. If enrollment in a treatment agency of the client's first choice is not available within a month, he must choose an enrollment in an agency where placement is immediately available until an opening may occur for his original preference.

(c) An individual who refuses treatment from a recognized agency or makes himself unavailable for treatment shall be considered *ineligible for assistance.*

5. Employment of Mothers and Provision of Day Care.

(a) The presence of children in the home shall not in itself be a basis for determining that a mother (or other female caretaker relative) is unemployable. It is the policy of the Department to require such persons to accept employment or training when not ill or incapacitated or otherwise excluded by the Definition of Employable.

(b) Such a person shall be required to accept employment or training leading to self-support unless her presence in the home is essential for the care of her children or other incapacitated members of the family.

(c) In determining the need for a mother to provide full-time care for other members of her household who are fully incapacitated or who are children, the social services official shall consider:

(1) The nature and extent of the incapacity; what effect the mother's absence would have on the health and welfare of the incapacitated person; whether other services or the assistance of others is available, and whether such alternative plans would adversely affect the incapacitated person.

(2) The number of children in the home, their respective ages, the existence of illness, handicap or special needs; what effect the mother's absence would have on health and welfare of the children; whether an adequate plan of child care is available; and whether such plan of child care would adversely affect the health and welfare of the children.

(d) When a mother's presence in the home is not essential, the only deterrent to her engagement in employment or training shall be the absence of an adequate plan of care for the children.

(e) A social services official shall be required to make a diligent effort to provide adequate day care to facilitate the mother's employment and training.

(f) The mother shall be required to make a diligent effort to obtain necessary child care. She

shall verify such effort by providing a written declaration periodically to this effect.

(g) The mother shall be involved in developing the child care plan, and when day care is to be provided by the social services official and alternate types of care are available, shall agree to type of care to be provided.

(h) Social services officials shall be responsible for the development of sufficient, adequate day care, and in particular, the development of family day care homes.

(i) Social services officials shall be responsible for insuring that group day care facilities used by them have been licensed and that in-home day care meets federal and state standards.

6. Referral of Employables to State Employment Service.

(a) All unemployed employable applicants for assistance shall be referred to the State Employment Service for manpower services and certification *prior to the granting of assistance.*

(b) All unemployed employable recipients shall be referred to the State Employment Service on a semi-monthly basis for manpower services and certification.

(c) All unemployed employable recipients satisfactorily participating in an approved program of vocational training or rehabilitation shall be referred to the State Employment Service on a semi-monthly basis for a review of their progress in training, necessary manpower services, and certification.

(d) Reporting will be on a spaced basis during the semi-monthly period, as specified in the procedural section.

(e) A person assigned to and participating in Work Relief (Public Work Project) under the provision of Section 164 of the Social Services Law shall be deemed employable but not employed.

7. Delivery of Checks.

(a) All unemployed employable *grantees*, including those participating full-time in an approved program of vocational training or rehabilitation shall be required to pick up their regular semi-monthly public assistance check at the time of their reporting to the State Employment Service.

(b) The State Employment Service will release the check to the grantee if he appears for delivery. If the grantee fails to comply with the law, the State Employment Service will immediately notify the social services district of the non-compliance for appropriate action and sanctions by the district.

(c) Those unemployed employable recipients and those who are in a full-time approved program of vocational training or rehabilitation, who are not grantees, shall be required to report to the State Employment Service for a review of their progress in training and necessary manpower services on a semi-monthly basis. The family's assistance check will be delivered to the grantee in the usual manner.

8. Failure of Applicants or Recipients to Comply With the Requirements and Sanctions to be Applied.

Exhibit C Attached to Answer.

(a) Generally, the provisions found in Department Regulations 385.5(c), 385.6, and 385.7 are applicable. (See Bulletin 26, pp. 11, 12, 13, 14.)

(b) Specifically, a person shall be deemed to have refused to comply with the requirements of the law, and he shall be considered ineligible for assistance or care if he fails, *without good cause,* to:

(1) Report to the SES;

(2) Accept a referral;

(3) Report to the SES the results of a referral to employment;

(4) Accept employment or training;

(5) Report for employment or training; or,

(6) Continue in employment or training.

(c) The determination of *good cause* shall be made by the social services district immediately upon notification of the recipient's failure to comply with the law. Such determination shall be made on the basis of the recipient's continuing employability in accordance with the Definition of Employable, and in the instance of a job refusal, such determination shall be made in accordance with Department Regulation 385.6 (Bulletin 26). If the failure was *without good cause,* his assistance shall be terminated, or in the instance of an applicant his application shall be denied in accordance with the provisions of Department Regulation 385.7 (Bulletin 26). Such person shall continue to be ineligible for further assistance until such time as he is willing to comply with the requirements of the law, *but:*

(1) A recipient shall not be eligible for any assistance for a period of one month from the termination of assistance.

(2) An applicant shall not be eligible for one month from the time of his failure to comply.

9. Schedule for Implementation.

(a) By no later than July 1, 1971, all recipients of HR, ADC, and ADC—U who are currently classified as unemployed employables shall be referred to the appropriate State Employment Service office.

(b) Immediate assessment of all new applicants for HR, ADC, and ADC—U, and immediate referral of all found to be employable.

(c) Priority shall be given to the assessment, identification and referral of all other HR and ADC males under 50 years of age who are not now classified as employable.

(d) At the point of next recertification or next contact, whichever is earlier, all other ADC, ADC—U, and HR cases shall be reviewed to identify other employables (*i.e.*, mothers, youths becoming 16, males over 50 and others whose employable status has changed).

II. Procedures.

A. Screening.

In accordance with Administrative Letter 71 PWD—34 and I. A. 2. and B. of this letter the local social services districts must rescreen their current cases to identify employables. This screening must be completed prior to July 1, 1971.

Exhibit C Attached to Answer.

B. The Use of Social Security Numbers.

1. It is essential that Social Security numbers be obtained quickly since unemployed employables must have a Social Security number in order to become employed.

2. Ultimately, Social Security numbers will be used as the identification number for State Employment Service and the basis for setting up appointments with State Employment Services for services and check pick up as explained in paragraph II. C. 1 (a) (2). As of July 1, 1971, such Social Security numbers may be so used only if all of an agency's unemployed employables have Social Security numbers. Otherwise, case numbers will be used in their place for the interim period. The local Employment Office shall be advised of what numbers are to be used effective July 1, 1971.

The following procedures for obtaining Social Security numbers are to be followed:

1. Applicants.

Social Security numbers must be obtained for all applicants and others in their families who are 14 years of age or over, regardless of category as they apply for public assistance.

In separated agencies, the applicant should be requested to enter the appropriate number Section B on Form DSS—1229, "Certification of Need for Public Assistance". In agencies in which separation has not yet been effected, the Social Security number should be entered on Form DSS-1163 (Formerly (WS-11) at the time of application. Any individuals who do not have Social Security numbers or who cannot find them must obtain

them in the manner described for undercare recipients below.

2. Recipients—HR and ADC.

A Social Security account number is also required for all persons 14 years of age and over. Agency records must be screened immediately for such numbers. For those individuals for whom a Social Security number is not found, a careful plan should be made in the agency so that the next Social Service employee to be in touch with the family will deliver a Social Security Number Application Form (SS-5, Exhibit I). In separated agencies, any member of the Social Service Team, as well as Volunteers or Outreach workers may take up the matter of the Social Security number since employment is an appropriate Social Service function.

At the time of the contact, the following sources might be checked to obtain the individual's Social Security number:

A Social Security Card;
Recent Income Tax Return;
Withholding Statement, W-2;
Unemployment Insurance Card; and
Pay stubs from former employers.

If this effort still does not produce a Social Security number, an Application Form (SS-5) should be prepared immediately. The individual should be assisted in completing and signing the Application Form, together with an authorization to the Social Security Administration for the release of this information for Home Relief cases (Exhibit I-B). When preparing the SS-5 Form, each item of information is required since the application

will not be processed if it is incomplete. If any of the information requested is not known, the word "unknown" *must* be inserted in the blank space so that the Application Form will be considered complete.

In large agencies, if it is found that many individuals are without Social Security numbers, the applications obtained may be batched in numbers of 50 and delivered to the local Social Security Administration District Office. The transmittal to the Social Security Administration (Exhibit 1-A), contains a blanket Certification stating that individual release for HR cases are on file in the local Social Services agency. It is suggested that Social Services agencies contact the district Social Security office and agree upon suitable batch sizes. In using this procedure batches of applications are to be transmitted in agreed upon sizes accompanied by two copies of a batch transmittal list. This list shall identify the Social Services agency and the transmittal date, and list the recipients for whom Application Forms, SS-5, are being forwarded. Cases shall be listed in alphabetical sequence. The public assistance case number must be indicated next to the recipient's name. In order to speed up processing, it is suggested that applications for persons 16 years of age and under be batched separately, since processing time for these individuals is shorter.

In about two weeks time, the local Social Security District Office should receive a reply from Baltimore and will list each individual's assigned Social Security number next to his name. These batch transmittal lists will then be returned to the appropriate Social Services district. The Social Security numbers obtained for HR and ADC recipients shall be entered on agency records as described above in the procedure for applicants.

Exhibit C Attached to Answer.

C. Referral of Employables to State Employment Service.

(a) Exhibit 8 is a suggested letter to schedule appointments for HR and ADC employables to come in for an employability assessment and Signature ID Card when necessary.

(1) Prepare "Referral to New York State Employment Service" (DSS-1653, see Exhibit 2 attached) in duplicate. Original is hand carried by grantee to New York State Employment Service. Duplicate is filed in Eligibility Record. Instructions for preparation of Form-1653 are contained on the reverse of the form.

(2) Assign a reporting date and time. State Employment Service District offices will make available to each Social Services officer by June 15, 1971, the final calendar schedule which is to be used by each district for assigning reporting dates and times. You will find in Exhibit 3 a model of such a calendar. You will note in some instances, up to a 3 day time lag beyond the normal semi-monthly period. This period of time should not be exceed in making a local adaptation of this model.

Each local Social Services office shall contact the State Employment Service office servicing them and agree on the use of Social Security numbers or case numbers for identifying and referring unemployed employables. A district shall use either a Social Security number or a case number, but not both.

(3) Section 131 of the Social Services Law as amended by Chapter 103, requires the issuance of photo identification cards for persons to whom public

assistance payments are to be paid. An administrative letter will be released in the near future to implement this procedure. However, if the grantee hasn't been issued a photo ID card before he reports to New York State Employment Service, he should be given a Signature ID Card (DSS-1767, Exhibit 4), as a temporary measure for use until a photo ID card is issued. (Agency may use an approved local equivalent where Signature ID Cards are already in use).

All employable persons requiring a Signature ID Card will have to report to the local Social Services agency for issuance. The employable shall sign in the presence of an authorized official and then the official will validate the card by signing. The local Social Services agency shall transmit, to Employment Service, in a letter signed by the Commissioner or his designee, a list of those persons and their signatures who are authorized to validate Signature ID Cards. This list should be supplemented with additions and deletions as they occur.

(4) An "Authorization of Grant" (DSS-638) to issue a special cast grant covering the interim period from July 1, 1971 through the date on which the grantee first reports to the State Employment Service shall be prepared. Reporting dates are determined as explained above. A notice shall be sent to the grantee with this special check informing him that this check is to cover the period from the first of July 1971 through his first reporting date, and information that all future checks in the regular amount will be distributed by the New York State Employment Service at the time of his semi-monthly employment service contact.

Exhibit C Attached to Answer.

NOTE:

(1) The program designation on the DSS-638 shall have an "E" suffix to identify the case as containing an employable. (ADC-E, HR-E).

(2) Accounting will continue to issue semi-monthly checks on the first and sixteenth of the month. The period of the check will be coordinated with referral cycle.

(b) Employables other than grantee presently on assistance.

(1) Prepare Form DSS-1653—"Referral to New York State Employment Service" in duplicate. The original is hand carried by the employable to the New York State Employment Service. The duplicate is to be kept on file by the agency for matching with Form ES-28 which will be originated by the State Employment Service for all persons receiving employment services. Instructions for preparation of Form DSS-1653 are contained on the reverse of the form.

(2) Assign a reporting date as outlined in paragraph II. C. 1. (a) (2) above.

(3) Issue this employable a "Signature ID Card"—(DSS-1767, Exhibit 4) as outlined in paragraph II. C. 1. (a) (3) above. At the time of issuance of the Signature ID Card the employable other than grantee shall be informed that he will not pick up a check at State Employment Service, but must report semi-monthly on the assigned reporting dates as a condition for his continuing eligibility for public assistance.

Exhibit C Attached to Answer.

2. Applicants for Public Assistance.

(a) Applicant (Head of Family) Who is Deemed Employable.

(1) Prepare two copies of "Referral to New York State Employment Service" (DSS-1653, see Exhibit 2 attached). The original copy is hand carried by the applicant to the New York State Employment Service as a prerequisite for eligibility for public assistance.

NOTE:

Emergency grants may be issued in verified emergencies where applicant gives evidence of cooperating.

(2) Applicant hand carries the "Services to Social Services Client" form (ES-28 see Exhibit 5 attached) originated by the New York State Employment Service to the Social Services Department.

(3) Application process is continued and an interim grant (DSS-638) is prepared to carry the case through the first regular reporting date for State Employment Service service contact.

(4) Issue a "Signature ID Card" (DSS-1767 see Exhibit 4 attached) as outlined in paragraph II. C. 1. (a) (2) above.

(5) Assign him a regular reporting date for reporting to New York State Employment Service in accordance with Exhibit 3 attached.

(b) Other Employable Persons included in the Application for Public Assistance.

(1) If other presumptive employables other than the grantee are not present at the time of application, it is the responsibility of the applicant to see that they report to the Social Services office for evaluation of employability. Prepare a DSS-1653 in duplicate, for each employable and instruct him to report to New York State Employment Service immediately with the original copy of the form.

(2) The employable hand carries the "Referral to New York State Employment Service" (DSS-1653) to the Employment office. Following his Employment Service contact, he hand carries the "Services to Social Services Client" Form (ES-28, see Exhibit 5 attached) originated by New York State Employment Service to the Social Services Department as evidence of having reported as required.

(3) Until the ES-28 is received by the Department of Social Services, the needs of the employable shall not be included in the grant of public assistance.

(4) When the ES-28 is received by the Department of Social Services, the employable is assigned a regular reporting date for reporting to New York State Employment Service as outlined in paragraph II. C. 1. (a) (2) above.

(5) Issue a "Signature ID Card" (DSS-1767, See Exhibit 4 attached) as outlined in paragraph II. C. 1. (a) (2) above.

D. Preparation of Payment Rolls for Cases which contain Employables. (See Exhibit 6).

1. All HR, ADC and ADC-U cases with unemployed employables shall, as of July 1, 1971, be issued assistance on a

semi-monthly basis. These cases with "E" designations shall be listed on separate rolls.

In place of the usual semi-monthly rolls, for payments to HR, ADC, and ADC-U cases with unemployed employables, individual daily rolls in case number order shall be prepared in accordance with their reporting dates at the local Employment Office. The assistance checks shall be attached to the respective daily rolls. If there is more than one Employment Office servicing a Social Services district, separate rolls shall be prepared for each State Employment Service office.

The daily rolls shall be summarized by semi-monthly periods and then carried forward to the regular monthly summaries to prepare monthly claims. Separate refund and cancellation rolls shall be prepared for cases with "E" designations.

Where a district normally lists all of its categorical cases on one roll, this procedure may be followed in preparing the daily rolls for cases with unemployed employables.

The daily reporting sequence is determined as outlined in Exhibit 3. This determination shall be made at the time the authorization is prepared. The location of the State Employment Service Office and the date and time of reporting shall be listed thereon.

2. Payment rolls and checks shall be prepared and transmitted on a semi-monthly basis. A footnote entry shall be made on the ADC Schedule A and on Schedule C listing the total payments and total refunds and cancellations relating to ADC-E, ADC-U-E and HR-E payments. Three copies of the roll must accompany the checks transmitted for the first and sixteenth day of the month. Rolls and checks must be

(1) If other presumptive employables other than the grantee are not present at the time of application, it is the responsibility of the applicant to see that they report to the Social Services office for evaluation of employability. Prepare a DSS-1653 in duplicate, for each employable and instruct him to report to New York State Employment Service immediately with the original copy of the form.

(2) The employable hand carries the "Referral to New York State Employment Service" (DSS-1653) to the Employment office. Following his Employment Service contact, he hand carries the "Services to Social Services Client" Form (ES-28, see Exhibit 5 attached) originated by New York State Employment Service to the Social Services Department as evidence of having reported as required.

(3) Until the ES-28 is received by the Department of Social Services, the needs of the employable shall not be included in the grant of public assistance.

(4) When the ES-28 is received by the Department of Social Services, the employable is assigned a regular reporting date for reporting to New York State Employment Service as outlined in paragraph II. C. 1. (a) (2) above.

(5) Issue a "Signature ID Card" (DSS-1767, See Exhibit 4 attached) as outlined in paragraph II. C. 1. (a) (2) above.

D. Preparation of Payment Rolls for Cases which contain Employables. (See Exhibit 6).

1. All HR, ADC and ADC-U cases with unemployed employables shall, as of July 1, 1971, be issued assistance on a

semi-monthly basis. These cases with "E" designations shall be listed on separate rolls.

In place of the usual semi-monthly rolls, for payments to HR, ADC, and ADC-U cases with unemployed employables, individual daily rolls in case number order shall be prepared in accordance with their reporting dates at the local Employment Office. The assistance checks shall be attached to the respective daily rolls. If there is more than one Employment Office servicing a Social Services district, separate rolls shall be prepared for each State Employment Service office.

The daily rolls shall be summarized by semi-monthly periods and then carried forward to the regular monthly summaries to prepare monthly claims. Separate refund and cancellation rolls shall be prepared for cases with "E" designations.

Where a district normally lists all of its categorical cases on one roll, this procedure may be followed in preparing the daily rolls for cases with unemployed employables.

The daily reporting sequence is determined as outlined in Exhibit 3. This determination shall be made at the time the authorization is prepared. The location of the State Employment Service Office and the date and time of reporting shall be listed thereon.

2. Payment rolls and checks shall be prepared and transmitted on a semi-monthly basis. A footnote entry shall be made on the ADC Schedule A and on Schedule C listing the total payments and total refunds and cancellations relating to ADC-E, ADC-U-E and HR-E payments. Three copies of the roll must accompany the checks transmitted for the first and sixteenth day of the month. Rolls and checks must be

transmitted to New York State Employment Service not less than two working days piror to the earliest check delivery date.

3. One copy of the roll will be signed by the cashier in the New York State Employment Service and immediately transmitted back to Social Services as acknowledgement of receipt of the checks transmitted.

4. When a client reports to New York State Employment Service for his service contact his check will be released to him and he will be required to sign the roll in duplicate as acknowledgment of receipt of his check. One copy of the roll with client's signature will be transmitted back to the Social Services district along with any undistributed checks not more than forty-eight hours after the scheduled reporting date. The remaining copy of the roll will become the New York State Employment Service's control. Rolls should be double spaced to insure sufficient space for a signature.

E. "Services to Social Services Clients" Form (ES-28) and returned Checks Not Released.

1. Reports from New York State Employment Service—The "Services to Social Services Clients" Form (ES-28) will be originated by Employment Services for each contact with a Social Service client (see Exhibit 5).

2. When New York State Employment Service indicates that the employable:

(a) Refused services except check delivery;
(b) Failed to report to employer for interview;
(c) Failed to report for work;
(d) Rejected by employer;
(e) Refused job;

Exhibit C Attached to Answer.

(f) Refused referral;
(g) Refused training;
(h) Failed to report for training;

they will batch these reports on top when transmitting the "Services to Social Services Client" Form (ES-28) to Social Services.

3. When "Services to Social Services Clients" Form (ES-28) are received in Social Service Department, they must receive a priority review so that appropriate action (as specified in E) can be taken immediately. In separated agencies, this will be the function of the Income Maintenance Section. In agencies not yet separated, caseworkers must assume this responsibility.

4. Checks returned from the New York State Employment Service shall be transmitted to the Accounting Section for safekeeping until appropriate action is taken to release or cancel them. Required action to reduce the grant or close the cases of individuals who fail to cooperate with the requirements of the law regarding employment and employment counseling shall be taken immediately in separated agencies by the Income Maintenance Section and in non-separated agencies by the designated casework staff in accordance with the instructions included in F.

5. In the case of non-grantee unemployed employables, Social Services districts shall file copies of Forms DSS-1653 by reporting date. As Forms ES-28 are received for non-grantee employables their copy of Form DSS-1653 shall be moved up to their next State Employment Service reporting date. In communities where there is a known problem with the delivery of mail, the agency may wait a period of up to 15 days before applying the sanctions referred to paragraph II. F. to the Forms DSS-1653 remaining in their original

reporting dates indicating they did not report to State Employment Service.

Extreme care must be taken that the "inventory" of Forms DSS-1653 contain at all times only the active non-grantee unemployed employables. Copies of Form DSS-1653 for such applicants shall be added and, in cases where for various reasons (employment, injury, etc.), a non-grantee is no longer an employable, the individual Forms DSS-1653 for these individuals shall be removed.

F. Application of Sanctions.

The local Social Service agency is required to take immediate action to either remove the individual unemployed employable recipient from the total budget, or close the case or in the instance of an applicant to deny assistance when a report from the New York State Employment Service indicates that the individual concerned has failed to comply as defined in I. B. 8. of this letter.

1. Applicants.

Applicants who refuse to register at the New York State Employment Office; who refuse a job offer; or who refuse a referral to a job must be advised immediately, by the Social Services Department, that they are *not eligible* for public assistance.

2. Recipients.

Employable recipients who refuse to register; refuse to report regularly as required; refuse a job referral; or refuse to accept a job offer must be advised immediately that they are *not eligible* for public assistance and that they will be removed from the budget, or, in the case of single individuals, their case will be closed. The present

requirements relating to fair hearings and pre-termination interviews must be observed. (See Bulletins 91b and 28). See Exhibit 9.

3. A change in authorization to effect the action required in I, B. 8. (c), must be processed immediately.

G. Reporting Requirements.

Detailed monitoring must be established in order to provide the necessary reports on the effectiveness of the provisions of the law. Each Social Service agency is therefore required to provide the following:

1. A record of the total number of unemployed employable applicants referred for initial registration.

2. A control of the number of unemployed employable grantees who are required to receive their assistance checks at the New York State Employment Service.

3. A control of the number of employables, other than grantees, referred to the New York State Employment Service for services on a regular reporting date.

4. A record of the number of grantees who fail to report to the New York State Employment Service. (This number can be obtained from the number of checks returned from the New York State Employment Service).

5. A record of the number of employables other than grantees who fail to report to New York State Employment Service. Please see paragraph II. E. 5.

6. A report on the effect of employment registration and services. This information can be obtained by

Exhibit C Attached to Answer.

analyzing "Services to Social Services Clients", Form ES-28 to determine the following information:

(a) Number of persons referred to job.
(b) The number of persons referred to training.
(c) The number of unemployed employable persons hired.
(d) The number of unemployed employable persons accepted for training.
(e) The number of unemployed employable persons who refuse to:

(1) report to State Employment Service;
(2) accept a referral;
(3) report for employment or training;
(4) or continue employment.

7. Social Service agencies shall also report the actions taken on the number of employable persons who fail to cooperate as specified in 6(e) as follows:

(a) Number of cases closed.
(b) Number of employable grantees removed from the grant.
(c) Number of employable persons (not grantees) removed from the grant.
(d) Number of persons not reporting for good cause.
(e) Change in employability status.

(1) Disruption of day care plan;
(2) fully employed;
(3) significant illness;
(4) other (specify).

(f) Temporary illness.
(g) Other (specify).

Exhibit C Attached to Answer.

8. In accordance with item I. B. 5. (f), each unemployed employable mother shall provide the agency with a certification of her efforts to obtain suitable care for her children as frequently as circumstances indicate. *i.e.*, a very rural area where resources are very limited versus an urban area where further efforts might be productive. The Day Care Certification, Form DSS-1775 is Exhibit 7.

In separated agencies, it will be the responsibility of the Validation Section of the agency to verify the information provided by the recipient on Form DSS-1775 at the time of the prescribed field investigation. In agencies that have not yet separated, this must be the function of the caseworker with responsibility for the case.

9. All local Social Service agencies must report the specific information required in G. by the tenth of the month following the month in which the action occurred. Two required forms summarizing and reporting the information needed are attached for this purpose (Form DSS-2192 and Form DSS-2198). In separated agencies, Form DSS-2192 shall be maintained on a daily basis by Income Maintenance staff. In non-separated agencies, the DSS-2192 may be maintained by individual caseworkers, who at the end of each month, will transmit their DSS-2192's to either the Employment Unit, the Resource Unit, the Category Unit or Income Maintenance staff who, based upon the size of the agency and the specific plan approved by the Area Office, will prepare Form DSS-2198 using Forms DSS-2192 and ES-28's. The Employment Register will be updated from the information on the DSS-2192. All DSS-2192 forms will be filed in the agency for audit trail purposes. (See Exhibits 10 and 11).

Exhibit D Attached to Answer.

The original Form DSS-2198 must be sent to the Director, Bureau of Local Management Services, 1450 Western Avenue, Albany, New York 12203. A copy of DSS-2198 shall be sent to the Area Director and a copy retained by each local Social Service agency.

An initial supply of forms will be transmitted to each district as soon as they are printed, subsequently they will be requisitioned in the usual manner.

Exhibit D.

STATE OF NEW YORK

Department of Social Services
1450 Western Avenue
Albany, New York 12203

George K. Wyman
Commissioner

Transmittal No.: 71 PWD-52
Date: June 28, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services.

Subject: Clarification of Questions Raised by Local Districts Regarding Administrative Letter 71 PWD-43.

Distribution: B-2 General Administrative Staff.

In the course of meeting with local Commissioners and their staffs around the State last week, certain questions were raised regarding Administrative Letter 71 PWD-43, which we agreed to explore further in Central Office and release the

answers to all districts in order that there might be a uniform interpretation of these requirements.

We trust the answers in this letter will assist you in the implementation of the requirements of 71 PWD-43. Should any further questions develop, you should contact your Area Office Director immediately.

GEORGE K. WYMAN,
Commissioner.

1. Question—Should the agency change the grantee when he or she refuses to comply with the requirements of Social Services Law, Section 131.4 or Social Services Law, Section 164 and is removed from the family budget?

Answer—Since the grantee is ineligible for assistance for 30 days a new grantee will have to be designated.

When the head of the household is a male, another adult in the family will be designated as the grantee.

When the head of the household is a mother, another eligible adult relative in the household will be designated as the grantee. If there is no other adult relative, payment for the children's care will be made as a protective payment.

2. If a recipient has income from other sources, such as U. I. B., Social Security, etc., is it necessary for an agency to issue a supplementary grant for the initial period prior to their first registration with the New York State Employment Service?

Answer—Since all available income has been applied against the budget needs to arrive at a budget deficit, which is the amount the recipient will receive, the agency may issue the prorated amount to which the recipient is entitled, except that checks for less than $1 should not be issued.

Exhibit D Attached to Answer.

3. Question—How do you handle payment of rent where the client has ordinarily been receiving a full month's rent in advance and will now be receiving semi-monthly grants for rent?

Answer—As an interim measure, for the month of July only, if the recipient's reporting date is prior to the fifth of the month, the rent may be included in the check dated July 1, 1971 which he will pick up at the SES office. If his reporting date is the fifth of the month or later, the rent may be included in the special prorated grant which all recipients who are required to report to SES will receive. Thereafter, a semi-monthly check will be issued. Local agencies should advise the landlords that each semi-monthly check will include one-half of the month's rent.

4. Question—In the case of a new applicant when should the first check be sent to the SES office?

Answer—The needs of the applicant will be met by a special check, to be given to him, until his second reporting date. Such check may include the rent from the first of the month or the preceding month as outlined in the regulations (352.7 (g) (5)) and Bulletin 134. This does not preclude the fact that the applicant must report to SES on his first reporting date even though he will not pick up a check at that time.

5. Question—What do we do in the case of a pregnant woman who is in receipt of Unemployment Insurance Benefits and is considered by U. I. B. until her eighth month of pregnancy?

Answer—The woman is considered unemployable from her fourth month of pregnancy by the Department of Social Services and will be removed from the unemployed em-

ployable status. However, in order to remain eligible for U. I. B. benefits she must continue to report to the U. I. B. office until her eighth month of pregnancy or until she is classified as unemployable by them.

6. Question—How will WIN recipients receive their checks?

Answer—The SES WIN team will work out the certification and check delivery.

7. Question—What about rent for Public Housing that must be paid within a specified period and if not a penalty will be assessed?

Answer—We do not have an answer at this time. The question will be discussed with the Housing Authority and if we are given an easement, you will be advised at once.

8. Question—How are full-time college students handled when they apply for assistance during the summer months?

Answer—If they report to SES, they are eligible, however, if they create an impediment to their employability with SES or a prospective employer they are ineligible.

9. Question—When a client who is an unemployed employable moves to another social services district, who controls the reporting and check issuance to the new SES office?

Answer—The social services district which originally had the case must contact their district Superintendent to ascertain which SES office the recipient must report to and the name of the district manager. They must then contact the manager at the new SES office immediately by telephone advising them that the client will report to them, and will pick up the check until the end of the month succeeding the

month that the client moved, (Regulation 311.3) obtain the new reporting dates and request that all ES-28's or undelivered checks be returned to them. The original social service district must also notify the new social services district that the client is now in their area and explain the arrangement made with the new SES office. Lastly, they must notify the client of the arrangements and advise him of his responsibility to report to the new SES office and social services dist that the client is now in their area and explain the arrangement made with the new SES office and social services district office.

10. Question—Are Cuban Refugees included in the employment program?

Answer—Cuban Refugees are not included in the employment program, however, they must be extended all manpower services for employment but their checks will be mailed to them rather than picking them up at SES.

11. Question—Isn't there a danger that the confidential information concerning names of people and amounts of assistance, which will be on the direct payment rolls at SES, will be misused and we will be challenged by HEW on the issue of confidentiality?

Answer—The Department has shared this problem with SES. Employment Service offices will cover the rolls with a template to allow only the individual persons name, address and amount of the check to be visible. We have been assured, by SES, that the confidentiality will be maintained.

12. Question—With the requirement of having unemployed employables picking up their checks at local SES offices on various days of the month a question has been raised as to whether a similar change should be made in the issuance of ATP's for the Food Stamp Program?

Exhibit D Attached to Answer.

Answer—No change will be made in the issuance of semi-monthly ATP's in the case of unemployed employables. Their ATP's shall continue to be issued and mailed with all other semi-monthly ATP's on the first and sixteenth of the month. ATP's shall contain no restriction as to cashing in a given month and shall be valid for an entire month. Local districts shall make such arrangements with their participating banks.

It shall be the responsibility of the client to manage his money affairs in such a manner as to be able to cash the two ATP's he receives in a month from the funds available from his semi-monthly checks.

In order to accommodate these procedures, some existing contracts between the banks and local districts will have to be modified to provide for the cashing of ATP's during every business day in the month. Furthermore, the banks will no longer be in the position to meet the tenth of the following month deadline for filing the required reports relating to the Food Stamp Program. We will have to obtain cooperation of the USDA to move back the reporting dates until at least the twentieth of the month following the month of activity.

13. Question—When an individual case is closed or an individual is removed from the family budget for non-compliance, what is the effective date of the action?

Answer—The effective date is the date the action is taken which is seven days from the date of non-compliance.

The fact that the check that has already been issued may cover a period into the next month has no significance. What is important for statistical purposes is *the date of the action.*

Exhibit D Attached to Answer.

14. Question—What procedure should be followed when a former recipient, who has been removed from the budget or the case has been closed for non-compliance, appears after 30 days stating he is willing to comply and requests to be reinstated?

Answer—When a single individual case has been closed the person must complete a new application and follow the normal routine for applicants.

If an individual was formerly in receipt of assistance in a family group, he must sign a certification (see exhibit attached) stating he is willing to comply with the law. He must also produce an ES-28 before he is included in the family budget.

15. Question—Do all cases that have unemployed employables have an "E" suffix to the category?

Answer—Yes, except when the only unemployed employable in a family case is not the grantee, the "E" classification shall not be used on the authorization or in the payment process. The assistance grants will be handled as regular ADC or HR which will have the effect of having all "E" cases as those where check delivery is the responsibility of the State Employment Service.

Of course, mandated reporting requirements must be met by the non-grantee unemployed employable in such cases. Eligibility/Income Maintenance staff (or in agencies not yet separated, casework staff) will verify that non-grantees report as required.

16. Question—What procedures will the Town Welfare Officers follow for Home Relief cases that were formerly ADC-U-FNP?

Exhibit D Attached to Answer.

Answer—The Town Welfare Officer must become knowledgeable of all the requirements in PWD-43 and must follow the same procedures outlined in this release The actual processing is a matter that the County Commissioner should work out with the Town Welfare Officer so that all town home relief checks and statistics become incorporated into the county system.

17. Question—When a person becomes ineligible for cash assistance does this affect his eligibility for medical assistance and food stamps?

Answer—Yes, ineligibility applies to all types of assistance.

18. Question—What can be done about expediting checks when the County Fiscal Officer refuses to sign checks before the monthly advance is received or no earlier than a time specified by local regulation?

Answer—A copy of the law should be submitted to the County Fiscal Officer and arrangements worked out to assure that the checks are released to SES on time. If the local social services official is unable to work out an agreeable arrangement.

It should be noted that recipient checks will be issued on the first of the month and the Local Fiscal Officer is responsible to provide funds for local needs.

19. Question—How are Income Maintenance or Public Assistance Units notified when checks are returned by SES?

Answer—Accounting must prepare a list and submit it immediately to Income Maintenances in separated agencies or PA units in agencies that are not yet separated.

Exhibit D Attached to Answer.

20 Question—When and where are voucher payments, dual payee checks and protective payments sent?

Answer—This question will be resolved shortly and you will be notified.

Exhibit 1.

DSS-1799 Social Service District

Certification for Reinstatement
of Public Assistance Grant

Name ..... Date .....
Address .....
Present Case Name .....
Case Number .....

I certify that I am now willing to comply with all regulations pertaining to the receipt of Public Assistance including the referral to the New York State Employment Service. I further certify that I will accept any referral to a job or training program and that I will remain on the job if I am accepted.

.....
Signature Date

[ ] ES-28 received from New York State Employment Service (The ES-28 must be received before assistance can be given).

.....
Worker Signature Date

Exhibit E Attached to Answer.

Exhibit E.

STATE OF NEW YORK

(Imprint)

6320

1971-1972 Regular Sessions

IN SENATE

April 1, 1971

Ch. 101

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT

To amend the social services law and the labor law, in relation to public works projects for employable recipients of home relief and aid to dependent children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred sixty-four of the social services law, such section having been added by chapter seven hundred fourteen of the laws of nineteen hundred fifty-nine, paragraph a of subdivision two thereof having been last amended by chapter six hundred seventy-three of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Exhibit E Attached to Answer.

§ 164. Work relief. 1. As hereinafter provided, employable persons receiving home relief [may] *shall* be required to perform such work as [may] *shall* be assigned to them by the [public welfare] *social services* official furnishing such home relief *or by the state industrial commissioner as hereinafter provided.*

2. (a) [When the legislative body] *The social services official* of a county, city or town which is responsible for providing home relief shall [determine and direct that] *provide for the establishment of public work projects for the assignment of* employable persons in receipt of home relief [shall be assigned] to perform work for such county, city or town[,] *or for the state, and* the head of any department, bureau, division or other unit thereof may request that such persons be assigned to his unit. *In providing for the establishment of such public work projects, such social services official may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.* In the case of a county [public welfare] *social services* district which is responsible for providing home relief within towns or cities within the county, [such determination shall be deemed to authorize the assignment of such] persons *may be assigned* to work for the state or any city, town, or village in the county [within which the department is so responsible], and the head of any department, bureau, division or other unit of the state or any such city, town or village may request such assignment. In the case of a town which is responsible for providing home relief within a town, [such determination shall be deemed to authorize the

assignment of such] persons *may be assigned* to work for any village in the town [within which the town is so responsible], and the head of any department, bureau, division or other unit of any such village may request such assignment. The request shall be addressed to the [public welfare] *social services* official *or to the state industrial commissioner, in appropriate instances,* and shall indicate the number of persons who can be used and the character of the work to be performed.

(b) The [public welfare] *social services* official *or the state industrial commissioner* shall thereupon assign such persons in receipt of home relief who, in his judgment, are able to perform the work indicated, provided he is satisfied that such persons will not be used to replace, or to perform any work ordinarily *and actually* performed by, regular employees of any department or other unit of such county, city or town, or to replace, or to perform any work which would ordinarily be performed by, craft or trade in private employment.

3. (a) Persons shall be assigned to perform only such work as they are able, in the judgment of the [public welfare commissioner] *social services official or the state industrial commissioner,* to perform.

(b) The number of days of work to be given each person shall be determined by the amount of the budget deficit of the recipient and his family computed on local home relief budget schedules. No person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount. No person shall be required to work more than eight hours in a day or more than forty hours in a week.

4. Any person who refuses to report for or to perform work to which he has been assigned by the [public welfare]

social services official *or the state industrial commissioner* shall thereupon become ineligible for home relief.

§ 2. Such law is hereby amended by adding thereto a new section, to be section three hundred fifty-k, to read as follows:

§ 350-k. Public works projects. 1. Public works projects meeting state and federal requirements shall be established, or the establishment thereof shall be provided for, by every social services district for the conservation of work skills and/or the development of new skills of parents and other eligible relatives receiving aid to dependent children from such district.

2. In providing for the establishment of such projects, the district may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.

3. A parent, or other eligible relative whose maintenance is included in the grant and allowances, may be assigned to participate in such a public work project, only if: (a) appropriate standards of health, safety and other work conditions are maintained;

(b) the number of days work to be given each person shall be determined in the case of a parent, by the amount of the grant or allowance, and in the case of such other eligible relative, by the amount included in the grant or allowance for his maintenance, provided that no person shall be required to work for more than the number of days

necessary to earn such amount or to be paid more than such amount, or to work more than eight hours in a day or more than forty hours in a week;

(c) such assignment would not result in the displacement of regular workers or in the performance by such parent or relative of work that is being performed by employees of public or private agencies, institutions or organizations;

(d) provisions are made to extend coverage to such parent or relative under the workmen's compensation law;

(e) such person is deemed employable under the provisions of subdivision four of section one hundred thirty-one of this chapter;

(f) provisions are made to permit such parent or relative to seek regular employment and/or to secure appropriate training or re-training opportunities which may be available.

4. A parent or other eligible relative required to participate in a public work project who fails to participate in such project, without good cause, as defined by regulation of the department, shall thereupon become ineligible for aid to dependent children.

5. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not bring an action or proceeding against any person, to recover for payments correctly made to a parent or other eligible relative on account of his participation in a public work project.

6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

§ 3. Section eight hundred twenty-one of the labor law, as amended by chapter one hundred twenty-eight of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§ 821. State training courses. The commissioner may provide for vocational and related, institutional and on-the-job training courses as described in section five hundred ninety-nine of this chapter *and for the administration of public work projects for recipients of public assistance*, and *may* contract for [this purpose] *these purposes* with *public and private agencies* including public and private institutions of learning, employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and under-employed persons who would meet the conditions for approval as specified in [such] section *five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for occupational training, nor assigned to public works projects by public welfare officials, made to a parent or other eligible relative on account of his participation in a public work project.*

6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

§ 3. Section eight hundred twenty-one of the labor law, as amended by chapter one hundred twenty-eight of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§ 821. State training courses. The commissioner may provide for vocational and related, institutional and on-the-job training courses as described in section five hundred ninety-nine of this chapter *and for the administration of public work projects for recipients of public assistance,* and *may* contract for [this purpose] *these purposes* with *public and private* agencies including public and private institutions of learning, employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and under-employed persons who would meet the conditions for approval as specified in [such] section *five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for occupational training, nor assigned to public works projects by public welfare officials.* The commissioner may provide for such payments, either in advance or by way of reimbursement, from funds made available to carry out the purposes of this article, as he deems necessary.

§ 4. This act shall take effect July first, nineteen hundred seventy-one.

Exhibit F Attached to Answer.

Exhibit F.

STATE OF NEW YORK

Department of Social Services

1450 Western Avenue
Albany, New York 12203

GEORGE K. WYMAN
Commissioner

Transmittal No.: 71 PWD-48
Date: June 15, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services
Subject: Public Work Projects
Distribution: B-2 General Administrative Staff

I. A. LEGAL BASIS

Chapter 101 of the Laws of 1971, amended Section 164 of the Social Services Law to require each social services district to provide for the establishment of Public Work Projects for the assignment of employable persons on home relief. In establishing the Public Work Projects, a social services district is authorized to contract with the state Industrial Commissioner for the establishment and implementation of the projects and for the assignment of persons, if the Industrial Commissioner is agreed to such a contract.

The amended law further requires that all employable persons receiving home relief are to perform such work as shall be assigned to them by the social services official or by the state Industrial Commissioner.

Exhibit F Attached to Answer.

B. PURPOSE

1. The mandated development of Public Work Projects as specified by Chapter 101, provides for an expansion of opportunities for work in such projects for those recipients who have been unable to secure employment in the regular economy. It is anticipated that employment on Public Work Projects will have a positive influence on the attitudes and morale of the participants and will also have a beneficial effect on their families.

Public Work Projects shall provide the following:

(a) Work experience in preference to inactivity, while also providing work training for the inexperienced;

(b) Meaningful work for the recipient, while providing meaningful service to the public;

(c) The conservation and/or the development of work skills in order to maintain recipients' employability, thereby enabling participants to move from the Public Work Projects into the regular labor market.

2. Implementation of amended Section 164 of the Social Services Law in no way relieves the social services district from its responsibilities as specified in Section 131.4 of the Social Services Law to require all employable applicants and/or recipients of assistance to report initially and semi-monthly thereafter to the State Employment Service Office for Manpower Services and placement. Neither is the recipient relieved of his responsibilities as specified in Section 131.4 of the Social Services Law to report initially and semi-monthly thereafter to the State Employment Service and in the instance of a grantee to pick up his public assistance grant at the State Employment Service Office.

Exhibit F Attached to Answer.

C. TYPES OF PROJECTS

Recipients may be assigned to work for State or any city, town or village in the county (See SSL Section 164).

Projects, generally, will fall within four broad areas:

1. To maintain or to develop adequate work habits. Examples of such projects would be as follows:
   (a) simple maintenance of recreation areas, roads, parks, office buildings, pick-and-shovel work, etc.
   (b) routine general office and clerical work, such as, filing, simple record keeping, etc.
   (c) providing aid and assistance at an untrained level in institutions, on playgrounds, etc.
2. To maintain and to improve existing skills. Examples of such projects would be:
   (a) improvement of recreation areas and facilities, auto mechanics, building maintenance, etc.
   (b) provision of service in the recreation field, food service field, etc.
   (c) office and clerical work, including typing, stenography, bookkeeping, etc.
3. To develop new skills. Examples of such are:
   —skilled office and clerical positions,
   —skilled appliance and equipment repair,
   —skilled food service trades.
4. Projects of special interest to the local government.

Such projects could be an amalgam of the above three, but would be primarily focused on such special interests

as improving the environment, cultural activities beautification of roadsides, parks, etc. Other kinds of activities of a specialized interest area might be in the Food on the Table Program.

Although such projects specified under No. 3 would be generally to provide higher skilled type training, it would not be considered replacement of regular employees, since individuals participating in such projects would be working along with the regular employee, gaining the necessary experience and training in the specific area.

D. GENERAL REQUIREMENTS FOR OPERATION OF PROJECTS

Public Work Projects shall meet the following minimal requirements:

1. Reasonable assurance and be performed in such a manner to insure that the work is useful;

2. Persons assigned to such projects will not be used to replace, to perform any work ordinarily and actually performed by regular employees of any department or other unit of government, or to replace or to perform any work which would ordinarily be performed by craft or trade in private employment. (In the event of an extreme emergency, such as a flood, fire, etc., such a restriction could be waived so long as the work to be performed was work normally undertaken by the sponsor of the project.);

3. Appropriate standards of health, safety and other conditions are established and maintained. Participants should be given adequate protection against hazards or activities which would adversely affect their health;

4. Sanitary facilities should be supplied or available, and a basic standard of cleanliness be maintained;

5. Participants shall be required to perform only those physical activities which are within their established physical capabilities;

6. Adequate first-aid supplies shall be available at the site of the project;

7. Recipients assigned to Public Work Projects shall be insured in accordance with the provisions of the Workman's Compensation Law of the State of New York.

8. Adequate time records shall be kept by the sponsor;

9. There shall be no discrimination on the grounds of race, color or national origin;

10. A recipient shall be required to work the number of days as determined by the amount of the grant, provided he shall not be required to work for more than the number of days necessary to earn such an amount or to be paid more than such an amount, or to work more than 8 hours in a day, or more than 40 hours in one week, or the customary full work week of the employer, if less. Payment credits for work shall be made at the State minimum wage or at the wage paid to local government employees in the classified services for comparable work; and

11. Where practical, the participant's work should be so scheduled so as to make time available for him to report to the State Employment Service and to look for employment, as well as necessary time to meet with the caseworker from the Social Services Department. Where such scheduling is not practical, a system of release time to accomplish these pruposes shall be provided.

Exhibit F Attached to Answer.

12. Whenever a recipient fails, without good cause, to comply with the requirement to accept referral to and participate in a Public Work Project he shall be ineligible for Home Relief.

E. RESPONSIBILITY OF LOCAL DEPARTMENTS OF SOCIAL SERVICES

Local Departments of Social Services will have the following responsibilities:

1. Develop a sufficient number and variety of Public Work Projects within their district to insure the availability of such a project for all of their unemployed employable Home Relief recipients who have been unable to secure employment in the regular economy.

2. Assign to Public Work Projects those recipients for whom S. E. S. have been unable to place in the regular economy after 30 days from the date the recipient first received assistance.

2. (Alternate) If the S. E. S. opts to contract to operate the Public Work Projects in the district, the S. E. S. would assign the individual to the appropriate project and so notify the social services district.

3. Monitor the participation of the individuals and take appropriate action when an individual fails to report to a Public Work Project, or fails to continue to participate in such projects.

4. Provide a pre-placement physical whenever there is any reason to suspect a health problem or whenever an individual requests such an examination.

5. Provide transportation or meet the cost of transportation to a central point and provide necessary grants and allowance for lunches.

Exhibit F Attached to Answer.

6. Insure that adequate child care is provided to children of mothers or other caretakers who are participating in the program. The cost of such child care shall be met as a "Purchase of Service."

9. Move as rapidly as possible to place all of their unemployed employables, who are unable to secure employment in the regular economy or who are not in an approved training program after being on assistance for 30 days, into Public Work Projects, as follows:

   (a) By October 1, 1971, a minimum of 30%

   (b) By November 1, 1971, a minimum of 50%

   (c) By December 1, 1971, a minimum of 70%.

10. Inform the appropriate S. E. S. office of the location and work component of each Public Work Project available in the social services district.

11. Designate at least one staff person to act as coordinator/liaison for the program. Such person would be responsible for recruitment of sponsors and in general for the program in the district. For those districts having a WIN Program, this function might be handled by the WIN unit.

F. RESPONSIBILITY OF SPONSORS

Sponsors of Public Work Projects shall adhere to general requirements as specified above and, in addition, shall:

1. Submit to the local social services district (or to the Industrial Commissioner where contractual arrangement has been made) a description of the Public Work Project which they are prepared to operate, including:

   (a) the nature of work to be performed,

(b) guarantees that the general requirements are met,

(c) agreement to provide necessary supervision and any additional equipment required by the project.

2. Maintain time records as noted previously which will include:

(a) the name of the sponsoring agency,

(b) participant's name, social security number, and social services case number,

(c) the type of work performed,

(d) the period covered by the time report,

(e) the exact time the participant was on the job, and

(f) a prevailing rate per hour for the job.

3. Transmit such time records to the social services district on a regular basis. (Where a contractual arrangement exists with the Industrial Commissioner, such time records shall be transmitted to the Industrial Commissioner.)

4. Prompt notification to the appropriate agency of a participant's absence, except when such absence is on a preplanned basis.

5. Provide transportation for recipients from a central point to the individual Public Work Project site.

6. Supervisors of such projects shall be required to report any illness or injury to the appropriate administrative office.

7. When a participant is absent from the project because of illness or injury, the sponsor shall require medical verification of the participant's ability to work, in ac-

cordance with the same rules as apply to regular employees of the sponsor. Payment for such medical verification is to be made by the social services districts under the MA Program.

8. Provide the appropriate administrative agency, *i.e.*, either the social services district or the Industrial Commissioner, with periodic reports as to the individual's attendance, participation, attitudes, etc., as may be required.

9. Provide the tools and equipment needed by the participant.

10. Provide participants with necessary items of special clothing required by the nature of the project; *i.e.*, "hard" hats, safety shoes, foul weather gear, etc.

The Law regarding Public Work Projects becomes effective July 1, 1971. Revised regulations and page replacements for Bulletin 26 will be issued shortly.

II. *Procedure*

A. *Screening*

Local Social Services districts were advised in 71 PWD-34 and 71 PWD-43 to screen their current caseload to identify employables prior to July 1, 1971. If Home Relief Employables cannot be identified from this roster, it will be necessary to set up a separate Home Relief Roster and keep such roster current by addition and deletions as they occur. As unemployed employable Home Relief recipients are assigned to Public Work Projects, it will be necessary to enter the suffix "WR" after their case number on the appropriate roster.

Exhibit F Attached to Answer.

B. *The Use of Social Security Numbers*

It is essential that Social Security numbers be obtained quickly since unemployed employables must have a Social Security number in order to become employed. Should the employable not have a Social Security number, the procedure outlined in 71 PWD-43 for recipients (page 10, Item 2), shall be utilized.

C. *Referral to State Employment Service*

Unemployed employable Home Relief recipients shall be referred to the New York State Employment Service for regular reporting for services and check delivery in accordance with the procedure outlined in 71 PWD-43.

D. *Assignment to Public Work Projects*

When an employable Home Relief recipient has been in receipt of assistance for thirty days and such recipient has not been placed in employment by the State Employment Service, he shall be assigned to a Work Relief Project by the local Social Services district.

Alternate Procedure—When a local Social Services district has contracted with the State Industrial Commissioner to operate Public Work Projects, the unemployed employable Home Relief recipient will be placed in a Public Work Project, directly. State Employment Service will use Form ES-28, "Services to Social Services Applicants," to notify Social Services districts of such placement.

E. *Application of Sanctions*

Local Social Services districts are required to take immediate action to either remove the unemployed employable Home Relief recipient from the total budget or

close the case when such person fails to report to a Public Work Project or fails to continue to participate in said project without good cause. See Department Regulation 385.14 for determination of good cause.

II. Procedure (Continued)

The State Department of Social Services will supply Form DSS-1784 (See Exhibit 1, attached), "Notice of Failure to Report or Continue to Participate in Public Work Projects". Local districts shall make a supply available to each Public Work Project supervisor in their district for use in notifying the district of an unemployed employable's failure to report or continue to participate in a Public Work Project (except where such absense is pre-planned).

Unemployed employable recipients who refuse to report to, or continue to participate in a Public Work Project must be advised immediately that they are not eligible for public assistance and that they will be removed from the budget, or in the case of single individuals, their case will be closed. The present requirements relating to fair hearings and pre-termination interviews must be observed (See Bulletins 91b and 28).

A change in authorization to effect the action required to remove the recipient from the total budget or close the case must be processed immediately.

F. *Reporting Requirements*

Detailed monitoring must be established in order to provide the necessary reports on the effectiveness of the provisions of the law. Each Social Services agency is therefore required to provide the following:

Exhibit F Attached to Answer.

a. On a monthly basis;

1. A record of the total number of unemployed employable Home Relief recipients by grantee and other than grantee.

2. A record of the total number of Work Relief slots available in the district.

3. A record of Work Relief slots filled by grantee and other than grantee.

4. A record of the total number of unemployed employable Home Relief recipients assigned to a Public Work Project who failed to comply with provisions of the law as follows:

   (a) Number of persons who failed to report to a project by grantee and other than grantee.

   (b) Number of persons who fail to continue to participate in a Work Relief Project by grantee and other than grantee.

5. A record of the actions taken on the number of persons placed in a Public Work Project who failed to comply with the law as follows:

   (a) Number of cases closed

      (1) Failed to comply (HR single case only).

      (2) Fully employed.

   (b) Employable removed from grant by grantee and other than grantee.

   (c) Assistance continued by grantee and other than grantee due to a:

Exhibit F Attached to Answer.

(1) Change in employability status

a. Because of a disruption in Child Care.

b. Fully Employed.

c. Significant Illness.

d. Other—specify.

(2) Temporary Illness.

(3) Other—specify.

6. A record of Work Related Expenses broken down by

(a) Medical Examinations (includes pre-placement physical examinations and the cost of examinations required by sponsors of Public Work Projects as a prerequisite for a recipient's continuing in a Work Project after being off the job because of a prolonged illness or serious injury.)

(b) Day Care Expenditures for Work Relief Project participants.

(c) Transportation and Lunch Expenses for Work Relief Project participants.

NOTE: These expenditures will continue to be claimed on the appropriate Schedules C, D or G.

7. A record of the total net budget reduction caused by the closing of cases or removal of employables from grants.

b. On a quarterly basis;

A listing of Public Work Projects in operation in the district by Program Sponsor, Project Activity, number of slots available and number of slots filled.

G. Local Social Services districts shall record the data necessary to meet the statistical requirements in Section F.a. on a DSS-2192, "Income Maintenance Section Analysis of Employment Referral Actions", in such a manner as to identify action taken because an unemployed employable Home Relief recipient failed to comply with the law.

In the first column for case number and category, enter HR-WR or if the agency wishes, the entry may be in red or the HR cases might be segregated in order to assure correct statistics.

In separated agencies, Form DSS-2192 shall be maintained on a daily basis by Income Maintenance staff. In non-separated agencies, the DSS-2192 may be maintained by individual caseworkers, who at the end of each month, will transmit their DSS-2192's to either the Employment Unit, the Resource Unit, the Category Unit or Income Maintenance staff who, based upon the size of the agency and the specific plan approved by the Area Office, will prepare Form DSS-1773 using Forms DSS-2192 and DSS-1784's.

All Social Services districts must report the specific information required in Section F.a. by the tenth of the month following the month in which the action occurred. The required form for this purpose is DSS-1773, "Monthly Report of Work Relief Program Referrals",

is attached (See Exhibit 2). The original of Form DSS-1773 must be sent to the Director, Bureau of Local Management Services, 1450 Western Avenue, Albany, N. Y. 12203. A copy shall be sent to the Area Director and a copy retained by each local Social Services agency.

Local Social Services districts must report the specific information required in Section F.b. by the tenth of the month following the closing of the quarter. A required form for this purpose, DSS-1792, "Quarterly Report of Public Works Program", is attached (See Exhibit 3). The original of Form DSS-1792 must be sent to the Director, Bureau of Local Management Services, 1450 Western Avenue, Albany, N. Y. 12203. A copy of Form DSS-1792 shall be sent to the Area Director and a copy retained by each local Social Services agency.

An initial supply of forms will be transmitted to each district as soon as they are printed. Subsequently, they will be requisitioned in the usual manner.

GEORGE K. WYMAN,
Commissioner.

Exhibit G Attached to Answer.

Exhibit G.

STATE DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

Pursuant to the provisions of sections 20 and 34, 131 and 164, as amended, of the Social Services Law, I, ~~George K. Wyman~~ Barry L. VanLare/Acting, Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Subchapter B of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective July 1, 1971. Part 385 is hereby REPEALED, and a new Part 385 is substituted in lieu thereof, to read as follows:

PART 385

RESTORING EMPLOYABLES TO SELF-SUPPORT

Section 385.1 Definition of an employable person. (a) Each ADC or HR applicant or recipient age 16 and over shall be determined employable except by reason of:

(1) full-time employment;

(2) attendance at school, including a vocational or technical school, a college or a university, for a minor other than an emancipated minor;

(3) attendance full-time in grade or high school for an emancipated minor;

(4) full-time, satisfactory participation in an approved program of vocational training or rehabilitation which shall include but not be limited to participation in the Work Incentive Program or a two-year college program with a specific vocational objective;

Exhibit G Attached to Answer.

(5) part-time employment to the extent permitted by medical verification, or to the extent permitted by inability to secure adequate care for children or other incapacitated members except on a part-time basis;

(6) mental or physical illness or incapacity medically verified to be of such significant or substantial nature as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it is verified that the individual is potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable when determined medically to be free of drug use or to be participating in a methadone maintenance program or a rehabilitation program; or

(7) the need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care.

(b) A HR recipient participating in a Public Work Project established under Section 164 of the Social Services Law shall be deemed employable but not employed.

385.2 Check delivery. Each unemployed grantee of public assistance and each grantee who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his regular public assistance grants and allowances in person from the State Employment Service.

Exhibit G Attached to Answer.

385.3 Planning for employment, rehabilitation and training. (a) The social services district shall, when circumstances so require, provide:

(1) medical and other diagnostic examinations, when not otherwise obtainable, for the purpose of determining an applicant or recipient's employability or potential for rehabilitation or training;

(2) medical care, when not available through other agencies, to assist in restoring a recipient to a condition of self-support.

(b) The social services official shall:

(1) require an applicant or recipient, as a condition of eligibility for assistance and care, to:

(i) undergo a medical examination or other diagnostic assessment necessary for the purpose of determining his employability or suitability for training or rehabilitation. Such medical examinations shall not be required routinely, except for the WIN Program, but shall be related to the client's previous health and employment history and current health problems. Minors shall not be referred for a medical examination without the written consent of parent or guardian. The purpose of the examination shall be clearly explained to the recipient.

(ii) accept referral to or work in employment in which he is able to engage;

(iii) accept referral to or enroll in a program of vocational rehabilitation or training when such is deemed necessary;

(iv) give evidence as requested, that he is actively seeking employment; and

(v) accept referral to or participate in Work Relief on a Public Work Project, when appropriate;

(2) require an unemployed applicant or recipient who has a known history of drug abuse and who is unable to provide medical verification necessary for him to be declared employable, to accept referral to and to participate in an approved treatment program in accord with the following:

(i) if the applicant or recipient is known to or has a preference for a particular recognized agency, his choice shall be given consideration;

(ii) if enrollment in a treatment agency of his choice is not available within a month, he must choose enrollment in an agency where placement is immediate until an opening occurs in his preferred agency; and

(iii) an individual who refuses treatment from a recognized agency or makes himself unavailable for treatment shall be considered ineligible for public assistance;

(3) require an unemployed employable mother or other female caretaker relative to accept employment or training except when excluded for reasons specified in Department Regulation Section 385.1. In making a determination as to whether such person's presence in the home is essential for the care of her children or other incapacitated member of the family, consideration shall be given to the number of children at home, their ages, existence of illness, handicap or special needs, effect of the mother's/caretaker's absence on the health and welfare of the children or the incapacitated person,

and availability of adequate alternative plan or care, except that

(i) When the mother or female caretaker relative's presence in the home is not essential, the only deterrent to her participation in training or employment being the absence of an adequate plan of care for the children, the social services official shall:

(a) require the mother/caretaker to make diligent effort to obtain necessary child care and verify such efforts by providing a written declaration periodically;

(b) develop sufficient and adequate day care, and in particular, family day care homes to facilitate the mother's/caretaker's employment training;

(c) involve the mother/caretaker in developing the child care plan, and when day care is to be provided by the social services official and alternate types of care are available, she shall agree to the type of care to be provided;

(d) insure that group day care facilities used for the children have been licensed and in-home day care meets federal and state standards. Persons providing inhome care shall:

(1) be mature persons with an interest in and an ability to care for children and have good physical health with no mental or physical handicaps which would prevent them from giving adequate care;

(2) have time free from other responsibilities to serve the mother's family during the hours the children are under their supervision;

Exhibit G Attached to Answer.

(3) not leave the children unsupervised at any time nor care for more than five children including their own;

(4) serve adequate and nutritious meals and snacks to the children at appropriate intervals;

(5) provide appropriate health care for the children with particular regard to personal hygiene and safety and arrange to have available a person to call upon for assistance in case of emergency;

(4) provide services to deal with personal factors, such as personality, behavior characteristics, attitude to work, or lack of skills and family problems which prevent or limit persons in their use of training and in their achievement of stable employment;

(5) utilize public and voluntary agencies and other community resources, in the field of vocational rehabilitation, health, vocation and educational facilities and programs, including such agencies as rehabilitation centers and workshops, cooperating hospitals or clinics, community action agencies and neighborhood centers;

(6) insure that staff is informed of the functions and services of available training and rehabilitation services, both public and private;

(7) develop appropriate cooperative relationships with local employment and training agencies and facilities;

(8) establish special employment divisions and units when necessary in accordance with standards and requirements established by the Department, to coor-

dinate employment and training activities, to maintain appropriate liaison with employment and training agencies and to carry on other manpower functions authorized and approved by the Department;

(9) identify to local education authorities those public assistance recipients who may benefit from literacy training;

(10) evaluate each marginally and potentially employable person and utilize all appropriate resources for the restoration of health, aptitudes, and capabilities or the development of new aptitudes and skills so that they may receive manpower services;

(11) provide restorative medical services including provision of hearing aids, eye glasses and prosthetic devices to restore recipient to a condition of employability.

385.4 Referral of employables to SES. (a) Each unemployed employable applicant for HR and ADC shall be referred to the State Employment Service for manpower services and certification prior to the granting of assistance; however, a grant for emergency assistance to cover the period of time required by an applicant to allow him to report initially to SES and to obtain certification shall be provided.

(b) Each unemployed employable recipient of HR and ADC shall be required to report to the State Employment Service initially and on a semi-monthly basis for manpower services, certification and check delivery.

(c) Each recipient of ADC or HR who is satisfactorily participating in an approved program of vocational training or rehabilitation shall be required to report to the State Employment Service initially and on a semi-monthly basis for a

review of his progress in training, provision of necessary manpower services, certification and check delivery for a grantee.

(d) In the social services districts where a Work Incentive Program is operating under auspices of the State Employment Service, each employable recipient of ADC or ADC-U determined to be appropriate shall be referred thereto. Such referral to the Work Incentive Program shall take priority over other manpower services to be made available to such recipients. Such recipient is required to continue reporting to SES in accordance with subdivisions (b) and (c) above.

385.5 Determination of refusal to accept manpower services. (a) A person shall be deemed to have refused to accept manpower services as required and if an applicant, his application shall be denied, or if a recipient, his assistance shall be terminated if he, without good cause:

(1) as an applicant fails to report to SES and file with the social services official the proper certification that he has reported within the semi-monthly period prior to the application; or as a recipient, fails to obtain and file with the social services official the proper verification that he has reported on a semi-monthly basis for the manpower services and certification of SES;

(2) fails to report to SES for an interview with respect to employment or training when requested to do so by such office;

(3) fails to accept referral to employment or to report to such office the results of a referral;

(4) fails to accept employment or training;

(5) fails to report for employment or training;

(6) fails to continue in employment or training;

(7) voluntarily reduced his earning capacity;

(8) fails to accept referral to, report to or participate in work relief on a Public Work Project;

(9) as an unemployed employable recipient participating in an approved program of vocational training or rehabilitation, he fails to report to the SES semi-monthly.

(b) In determining whether a person has refused wilfully to accept employment, a social services official shall take into consideration the report of the State Employment Service, employment agency or prospective employer, the explanation provided by the applicant or recipient for not accepting the offer of employment and any other pertinent evidence.

(c) A person shall be deemed not to have refused wilfully to accept employment if evidence shows that:

(1) the job offer was not bonafide;

(2) the salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation or hours or conditions of work offered are substantially less favorable to the applicant or recipient than those prevailing for similar work in locality;

(3) a strike, lock-out or other industrial controversy was in progress at the place in which employment was offered;

(4) the acceptance of such employment would either require the applicant or recipient to join a company union or resign from or refrain from joining any bonafide labor organization;

(5) the job would have been hazardous to the applicant or recipient's life or health, or there was an absence, if appropriate, of workmen's compensation;

(6) the place of employment was an unreasonable distance from the applicant or recipient's home;

(7) transportation by public carrier or by private means between the applicant or recipient's home and the place of employment was unavailable;

(8) child care plans were temporarily disrupted making it impossible for the applicant/recipient to report as required; or

(9) temporary and verified illness incapacitated the client.

385.6 Sanctions (a) A person who (1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof, or (2) without good cause fails or refuses to undergo a necessary medical examination or treatment, or to accept referral to and participate in a vocational rehabilitation or training program, including the Work Incentive Program, or refuses to accept referral to and work in employment, including work relief, in which he is able to engage, shall be:

(i) disqualified from receiving assistance for 30 days thereafter and until such time as he is willing to comply with the requirements of this Part, except that

(ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his

earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applies for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

385.7 Financial aid to persons to obtain occupational or vocational training or employment in another district (a) To enable a recipient to accept employment available in another social services district within the State in fulfillment of a plan for self-support, an allowance for the recipient's maintenance may be provided, if necessary, until the recipient receives earnings which will permit him to be self-supporting.

(b) A plan for relocation shall be approved only after verification of the employment opportunity and pertinent information obtained about the wage rate, date and amount of first pay, living conditions and the possibility of transportation being provided by the employer or as an advance on wages.

(c) Approval of the plan shall be based on proof of assured employment; the likelihood of the recipient and his family becoming self-maintaining in the new locality and other pertinent social factors. Data and documentary material supporting the decision shall be recorded

in the case history. The social services district in which the recipient is relocating shall be advised of the plan.

(d) Provision shall be made to move household furnishings to enable the recipient's family to rejoin him when his ability to support them has been determined and the recipient's earnings are not sufficient to meet such costs in accordance with the provisions governing purchase of services.

(e) An allowance for transportation and maintenance may be provided to enable a recipient to undergo occupational training in another social services district within the State for purposes of fulfilling a plan of self-support until such training is completed and the recipient has returned to the social services district. Such plan shall be verified and the decision shall be recorded in the case history. The social services district in which the recipient will undergo training shall be notified of the plan.

385.8 Literacy training program. (a) Establishment of the program. When a social services official determines that there is need in his district for a Literacy Training Program, he shall notify the appropriate education official(s) of the need for such a program.

(b) Eligibility requirements. A recipient shall be eligible to participate in such program if he is:

(1) 16 years of age or over;

(2) not attending school;

(3) below an eighth year level of education; and

(4) capable of benefiting from such literacy training program.

Exhibit G Attached to Answer.

(c) Referral of recipients for training. Forms, provided by the Department or an approved local equivalent, shall be used when making such referrals in accordance with Department instructions.

(d) Support and encouragement. Recipients participating in such programs as part of their employability plan shall receive financial and supportive services such as transportation and child care expenses necessary to enable them to continue regular attendance.

385.9 Work relief in public work projects. (a) Each social services official shall establish or may contract with State Industrial Commissioner for the establishment of a Public Work Project for employable HR recipients who are unable to secure employment in the regular economy.

(1) Such persons may be assigned to work for the State or any city, town or village requesting such assignment.

(b) Each social services offical shall develop a sufficient number and variety of Public Work Projects within its district to insure the availability of such a project for all of their unemployed employable Home Relief recipients within the district who have been unable to secure employment in the regular economy.

(c) Public Work Projects shall provide the following experiences for the recipient:

(1) Maintain or develop adequate work habits.

(2) Maintain or improve existing skills; or

(3) develop new skills.

(d) All Public Work Projects shall meet the following requirements:

(1) The work performed shall be useful.

(2) Persons assigned to such projects shall not be used to replace or to perform any work ordinarily and actually performed by regular employees of any department or other unit of government, or to replace or to perform any work which would oridnarily be performed by a craft or trade in private employment.

(3) Appropriate standards of health, safety and other work conditions shall be established and maintained to insure that participants are adequately protected against hazards or activities which may adversely affect their health.

(4) Participants shall be required to perform only those physical activities which are within their physical capabilities.

(5) Recipients shall be insured in accordance with the provisions of the Workmen's Compensation Law of the State of New York.

(6) Adequate time records shall be kept.

(7) There shall be no discrimination on the grounds of race, color or national origin.

(8) Where practical, the participant's work shall be so scheduled as to make time available for him to report to the State Employment Service and to look for employment, as well as necessary time to meet with the caseworker from the Social Services Department. Where such scheduling is not practical, a system of release time to accomplish these purposes shall be provided.

(e) The social services official shall:

Exhibit G Attached to Answer.

(1) Assign those recipients whom SES have been unable to place in the regular economy after 30 days from the date the recipient first received assistance;

(2) require the recipient to work the number of days as determined by the amount of the grant, provided he shall not be required to work for more than the number of days necessary to earn such an amount or to be paid more than such an amount, or to work more than 8 hours in a day, or more than 40 hours in one week, or the customary full work week of the employer, if less. Payment credits for work shall be made at the State minimum wage or at the wage paid to local government employees in the classified services for comparable work;

(3) monitor the participation of the individuals and take appropriate action when an individual fails to report to, or fails to continue to participate in such projects;

(4) provide a pre-placement physical whenever there is any reason to suspect a health problem or whenever an individual requests such an examination;

(5) provide transportation to meet the cost of transportation to a central point and provide necessary grants and allowances for lunches;

(6) insure that adequate child care is provided to children of mothers or other caretakers who are participating in the program. The cost of such child care shall be met as a "Purchase of Service";

(7) inform the appropriate SES office of the location and work component of each Public Work Project available in the social services district;

Exhibit G Attached to Answer.

(8) designate at least one staff person to act as coordinator/liaison for the program. Such person shall be responsible for recruitment of sponsors and in general for the program in the district.

(f) The social services official shall require the governmental unit operating the Public Work Project to:

(1) Submit to the local social services district (or to the Industrial Commissioner where contractual arrangement has been made) a description of the Public Work Projects which they are prepared to operate, including:

(i) the nature of work to be performed;

(ii) guarantees that the general requirements are met; and

(iii) agreement to provide necessary supervision and any additional equipment required by the project.

(2) Maintain and transmit time records which shall include:

(i) the name of the sponsoring agency;

(ii) participant's name, social security number, and social services case number;

(iii) the type of work performed;

(iv) the period covered by the time report;

(v) the exact time the participant was on the job; and

(vi) a prevailing rate per hour for the job.

(3) Give prompt notification of a participant's absence, except when such absence is on a pre-planned basis.

Exhibit G Attached to Answer.

(4) Provide transportation, when necessary, for recipients from a central point to the individual Public Work Project site.

(5) Require supervisors of such projects to report any illness or injury to the appropriate administrative office.

(6) Require medical verification of the participant's ability to work, in accordance with the same rules as apply to regular employees of the sponsor, when a participant is absent from the project because of illness or injury.

(7) Provide the social services district with periodic reports as to the individual's attendance, participation and attitudes, as may be required.

(8) Provide the tools and equipment needed by the participant.

(9) Provide participants with necessary items of special clothing required by the nature of the project; e. g., "hard hats, safety shoes, foul weather gear, etc."

385.10 Special account number. Each applicant or recipient 14 years of age and over shall be required to possess a Social Security Account Number.

385.11 Records and reports. Each social services official shall: (a) Maintain an inventory of HR and ADC recipients 16 years of age and over specifying the current employment and employability status of such recipient; in accordance with criteria contained in Section 385.1 of this Part.

(b) Maintain records and provide information and data regarding the ADC and HR caseload and individual recipients to the Department and State Employment

Notice of Argument of Motion to Intervene as a Defendant.

Service as determined by the Department to be necessary for the furtherance of the program.

Dated: July 30, 1971.

Signed: .....
ACTING COMMISSIONER

This is to certify that this is the original of an order of the State Department of Social Services, made on July 30, 1971, amending in part, Subchapter B of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR.

Dated: July 30, 1971

Signed: .....
ACTING COMMISSIONER

Notice of Argument of Motion to Intervene As a Defendant

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Sirs:

PLEASE TAKE NOTICE that the annexed motion for leave to intervene as a defendant in this action will be heard by Honorable John T. Curtin, United States District Judge, at the United States Court House, Buffalo, New York, on the

17th day of September, 1971, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard.

Also annexed hereto is a copy of the intervenor's proposed answer in this action.

Dated: September 2, 1971.

Yours, etc.,

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Attorney for Intervenor
John L. Lascaris,
Office and P. O. Address,
600 South State Street,
Syracuse, New York 13202.

Motion to Intervene As a Defendant.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, move the Court for leave to intervene as a defendant in this action and show to the Court as follows:

1. The Onondaga County Department of Social Services administers public assistance and care, including home relief, and aid for dependent children within the County of Onondaga, State of New York.

2. On August 12, 1971, the intervenor was served with a Temporary Restraining Order signed by Honorable John T. Curtin, United States District Court Judge, ordering that five named persons, who are not named plaintiffs in the caption of the action, receive certain relief and that the "defendants" are restrained and enjoined from taking certain action with respect to public assistance for these five named persons. True copies of the two temporary restraining orders are annexed hereto.

3. On August 13, 1971, the Commissioner of the State Department of Social Services, George K. Wyman, directed the intervenor herein to comply with the Court orders, which orders had not been directed to the intervenor, since the intervenor was not a party defendant to the action.

4. The intervenor has a direct and continuing interest in the determination as to the appropriate administration of the Social Services Law as it affects the five persons named in the temporary restraining order, and, further, as the issues in the action affect the more than 12,000 public assistance cases that are pending in the County of Onondaga.

Under the 1971 amendments to the Social Services Law which are under attack in this proceeding, 1,184 employable persons on public assistance in Onondaga County reported to the State Employment Office during the month of August for job referrals and to pick up their welfare checks. Some 243 persons designated as employable failed to report as required by law. Each of these cases was individually reviewed by this Department and as a result of this review, 111 welfare checks were cancelled, 82 welfare checks were released to recipients who had a valid reason for not appearing, such as illness, lack of understanding, reclassification as unemployable, and so on, and the balance

of 50 welfare checks is being held pending individual review of the cases involved.

5. Intervenor believes that it can make a significant contribution to the Court's determination of the facts and law applicable to this matter. Intervenor is the only agency having direct knowledge of the facts pertaining to the Onondaga County Welfare recipients which are apparently participating as unnamed plaintiffs in this action, and, furthermore, intervenor believes that it can submit arguments with respect to the basic issues of law and fact which would have a significant bearing upon the Court's ultimate determination of this action.

6. Intervention should be permitted under Rule 24 of the Rules of Civil Procedure, both as a matter of right and as a matter of discretion.

7. The intervention sought will not unduly delay or prejudice the adjudication of the rights of the original parties.

8. The defenses which intervenor desires to present are questions of law and of fact which are common to the main action.

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Applicant for Intervention,
Office & P. O. Address,
600 South State Street,
Syracuse, New York 13202.

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and its Commissioner, John L. Lascaris.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Intervening defendant, Onondaga County Department of Social Services, and its Commissioner, John L. Lascaris, by their attorney, Leonard C. Koldin, Onondaga County Welfare Attorney, for their answer to the complaint herein:

1. ADMIT the allegations contained in paragraphs 11, 14, 15, 16, 17, 19, 21 and 22 of the complaint herein.

2. On information and belief, ADMIT the allegations contained in paragraphs 4, 5, 6, 7, 8, 24, 27, 29, 30 and 32 of the complaint herein. The source of their information and the grounds for their belief are affidavits of the plaintiffs submitted to the Court in support of an application for a Temporary Restraining Order.

3. DENY each and every allegation contained in paragraphs 36, 37, 38, 39, 40 and 41 of the complaint herein.

4. As to the allegations contained in paragraph 1 of the complaint herein, ADMIT those allegations are the stated purpose of the action and state the claims of the plaintiffs; but DENY any conclusions as to the validity of the claims contained therein which may be drawn from those allegations.

5. As to the allegations contained in paragraphs 2 and 3 of the complaint herein, ADMIT that the jurisdiction of the Court is invoked in this action as stated, but DENY any conclusions as to the validity of the claims therein stated which may be drawn from those allegations.

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and Its Commissioner, John L. Lascaris.

6. As to the allegations contained in paragraph 9 of the complaint herein, ADMIT that the action is brought as stated, but DENY any conclusions as to the validity of the claims therein stated which may be drawn from the allegations contained therein and further DENY that plaintiffs may properly bring this action as a class action on the ground that questions of law and fact affecting only the individual plaintiffs predominate over questions of law or fact common to the whole class as stated.

7. As to the allegations contained in paragraph 10 of the complaint here, ADMIT the allegations thereof except allege that the New York State Department of Social Services is the sole final authority for the administration of the New York Work Rules.

8. As to the allegations contained in paragraph 12 of the complaint herein ADMIT the allegations thereof, except allege that the correct title of the Department is the New York State Department of Labor and that the New York State Employment Service is the agency charged with implementing a portion of the Work Rules, but is not a final enforcing or administering authority.

9. As to the allegations contained in paragraph 13 of the complaint herein, ADMIT the allegations thereof, except allege that defendant, Louis L. Levine is the Industrial Commissioner of the State of New York and is the chief executive officer of the New York State Department of Labor.

10. As to the allegations of paragraph 18 of the complaint herein, ADMIT the allegations thereof, except that the State Department of Social Services regulations are general

statewide regulations and do not refer specifically to the individual plaintiffs herein or apply solely to Erie County.

11. As to the allegations contained in paragraph 20 of the complaint herein, admit the allegations thereof, except allege that the flat grant provided under Social Services Law, § 131-a does not include housing, fuel, medical expenses or other specific types of expenses as provided in the regulations of the Department (18 NYCRR § 352.1), and further allege that the standard of need for a family of 6 is $329 per month (not $326), and further allege that transportation allowances have been provided by regulation for persons engaged in Public Works projects under the New York Work Rules and can be provided by Department regulation in other instances where need is shown, and further allege that the computation of basic needs does not include specific amounts for items such as transportation, but is computed from Federal figures establishing low income levels converted to New York State costs which figures include an annual allowance for transportation amounting to approximately $80 for a family of four.

12. As to the allegations contained in paragraph 23 of the complaint herein, ADMIT the allegations thereof, except allege that the provisions of Section 350-K are not being applied to ADC and ADC-U recipients and that only Home Relief recipients are being referred to public works projects, and further DENY that the statutes do not set standards for type of work provided or wages to be paid to recipients.

13. As to the allegations contained in paragraph 25 of the complaint herein, ADMIT the allegations thereof, except allege that the correct title of the Department is the Depart-

ment of Labor, and deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

14. As to the allegations contained in paragraph 26 of the complaint herein, ADMIT the allegations thereof on information and belief, except deny that plaintiff's appointment could not be scheduled so that she could make the trip to Buffalo in one day.

15. As to the allegations contained in paragraph 28 of the complaint, ADMIT the allegations thereof, on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

16. As to the allegations contained in paragraph 31 of the complaint herein, ADMIT the allegations thereof, on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

17. As to the allegations contained in paragraph 33 of the complaint herein, ADMIT the allegations thereof, on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

18. As to the allegations contained in paragraph 34 of the complaint herein, ADMIT the allegations thereof on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

19. As to the allegations contained in paragraph 35 of the complaint herein, DENY knowledge or information sufficient to form a belief as to the allegations contained

therein, except DENY that ADC or ADC-U recipients may be referred to public works projects under the Departmental regulations.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

20. Prior to the enactment of Chapter 102 of the Laws of 1971, a copy of which is attached hereto as Exhibit A, Social Services Law, §131 required "employable" recipients of public assistance to report semi-monthly to the nearest office of the State Employment Service for referral. That section also contained an exemption from the definition of employable of persons unable to work by reason of age, health, or other disability. Chapter 102 amended that Section in two respects. First, it clearly defined the persons who would be deemed not to be employable, at those persons rendered unable to work by reason of illness, significant and substantial physical or mental incapacity, advanced age, full-time attendance at school in the case of a minor, full-time satisfactory participation in an approved program of vocational training or rehabilitation, or the need of such person to provide full-time care for other members of the household for whom care is otherwise not reasonably available. Thus, for the first time, the statute actually contained a definition and standard for determining which public assistance recipients were or were not employable. Contrary to the allegations of the plaintiffs, Chapter 102 established the first statutory standards for that determination and established standards which are on their face reasonable and fair.

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and Its Commissioner, John L. Lascaris.

21. Secondly, Chapter 102 provided that "employable" public assistance recipients would, at the time of their reporting for job referral or employment counseling, have their assistance checks personally delivered to them. Not only would that system provide an accurate method of determining whether or not employable receipients were in fact reporting for job referral or counseling, but also would assure those recipients of the receipt of their checks on a day certain, without having to rely on the uncertainty of mail deliveries, but would also tend to alleviate some of the problem of check thefts. Recipients considered non-employable by reason of participation in a program of vocations training or rehabilitation are also required to report to the offices of the State Employment Service for job counseling and for evaluation of their progress in the training or rehabilitation programs. At the time of such reporting they are also to have their assistance checks delivered to them. Chapter 102 has been implemented by Administrative Letters Nos. 71 PWD-34, 71 PWD-43 and 71 PWD-52, copies of which are attached hereto as Exhibits B, C, and D. These letters establish reasonable, fair and adequate standards for the determination of employability and the procedures for referral of employables for job referral and services.

22. Chapter 101 of the Laws of 1971 (a copy of which is attached hereto as Exhibit E) amended Social Services Law § 164 to require each social services district to provide for the establishment of Public Works Projects for the assignment of employable persons receiving Home Relief. Such programs would be established either directly by the social services district or, by contract, by the State Industrial Com-

missioner. Public Works Projects established under the law must meet State and Federal requirements and are to be provided for the conservation of work skills and/or the development of new skills of recipients of aid. Persons assigned to such projects must be employable under the terms of Social Services Law, § 131, as amended, and provision must also be made to permit such persons to seek regular employment or to secure appropriate training or retraining where available. Chapter 101 has been implemented by Administrative Letter 71 PWD-48, a copy of which is attached hereto as Exhibit F.

23. Both Chapters 101 and 102 have been implemented by Departmental regulations filed with the Secretary of State of the State of New York on July 30, 1971, a copy of which is attached hereto as Exhibit G. The Administrative Letters and Departmental regulations provide definite, reasonable, adequate and fair standards for administration of the programs and accord to the plaintiffs and other recipients of assistance subject to those regulations due process of law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

24. This Court should abstain from a determination of the issues raised in the complaint until plaintiffs have pursued administrative remedies available to them under State law. The complaint and the affidavits in support of the motion for a Temporary Restraining Order raise issues as to whether or not plaintiffs have been properly classified as employable and as to whether or not alleged hardships can not be alleviated by rescheduling of appointments or by

other administrative determinations. If plaintiffs' individual situations may be so resolved, then the constitutional issues need not be reached for a determination of the merits of plaintiffs' complaints.

WHEREFORE, defendants respectfully request that this Court enter a judgment dismissing the complaint herein and declaring Chapters 101 and 102 of the New York Laws of 1971 to be constitutional and valid.

Dated: August 31, 1971.

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Attorney for Intervening Defendants
Onondaga County Department of Social
Services and its Commissioner
John L. Lascaris,
Office & P. O. Address,
600 South State Street,
Syracuse, New York 13202.

EXHIBITS.

The Exhibits referred to in the answer are exactly the same as those Exhibits attached to the answer heretofore filed by the New York State Department of Social Services.

Order Temporary Restraining Order.

U. S. DISTRICT COURT

For the Western District of New York

(Title Omitted in Printing.)

This cause having come for a hearing on July 2, 1971, July 9, 1971, and July 16, 1971 on Plaintiffs' motion for a temporary restraining order and on the affidavit of Douglas Eldridge, the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that the Plaintiffs' motion be granted as to John W. Cooper and that Defendants be restrained and enjoined, pending the termination of issues before this Court

(a) from requiring Plaintiffs to pick up their public assistance checks at office of the New York State Employment Service, and from any further enforcement against the named Plaintiffs of New York Social Service Law sections 131 (4), 164, and 350-K;

(b) from failing to issue immediately, to the named Plaintiffs, by mail, public assistance checks to which they would have been entitled on July 1, 1971, but for the requirements of section 131 (4) and 350-K of the New York Social Service Law, less the amount contained in any "interim check" mailed on July 1, 1971, and less the amount of any check issued to John W. Cooper by the State Employment Service office.

Dated: August 6, 1971.

/S/ JOHN T. CURTIN,
United States District Judge.

Order Temporary Restraining Order.

U. S. DISTRICT COURT

For the Western District of New York

(Title Omitted in Printing.)

This cause having come for a hearing on July 2, 1971, July 9, 1971, and July 16, 1971 on Plaintiffs' motion for a temporary restraining order and on the affidavits of John Edgar and Harriet Rose, the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that the Plaintiffs' motion be granted as to Bertha Heath, Robert Allen, Stan Fleming, and James Moore, all of Onondaga County and that Defendants be restrained and enjoined, pending the termination of issues before this Court

(a) from requiring Plaintiffs to pick up their public assistance checks at office of the New York State Employment Service, and from any further enforcement against the named Plaintiffs of New York Social Service Law sections 131 (4), 164, and 350-K;

(b) from failing to issue immediately, to the named Plaintiffs, by mail, public assistance checks to which they would have been entitled on July 1, 1971, but for the requirements of section 131 (4) and 350-K of the New York Social Service Law, less the amount contained in any "interim check" mailed on July 1, 1971, and less the amount of any check issued to Bertha Heath, Robert Allen, Stan Fleming, and James Moore by the State Employment Service office.

Dated: August 8, 1971.

/S/ JOHN T. CURTIN,
United States District Judge.

Notice of Order Granting Leave to Intervene.

UNITED STATES DISTRICT COURT
Western District of New York

(Title Omitted in Printing.)

Sir:

Take notice of an ORDER, of which the within is a copy, duly granted in the within entitled action on the 24th day of September, 1971, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 28th day of September, 1971.

Dated: Buffalo, New York, September 28, 1971.

JOHN K. ADAMS,
Clerk U. S. District Court,
U. S. Courthouse,
Buffalo, New York 14202.

To:
Michael A. O'Connor,
Attorney for Plaintiff.

To:
Dennis R. Yeager,
Attorney for Plaintiff.

To:
Seymour Nathanson,
Attorney for Plaintiff-Levene.

To:
Virginia Schuler,
Attorney for Plaintiff-Betty Glenn.

To:
Jean M. Coon,
Attorney for Defendant—N. Y. S.

To:
Jason Karp,
Attorney for Pltf.—Beverly Stone.

FEDERAL RULES OF CIVIL PROCEDURE 77(d)

Order Granting Leave to Intervene.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

The Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, having moved this Court for leave to intervene as a defendant in this action, and the plaintiffs having moved for an order finding defendants New York State Department of Social Services, George K. Wyman and the Onondaga County Department of Social Services and John L. Lascaris, Onondaga County Commissioner of Social Services, in contempt of court, and for other related relief, and both motions having been heard by this Court on September 17, 1971, it is

ORDERED, that the motion for leave to intervene as a defendant be and the same hereby is granted in all respects; the caption of the action shall be deemed amended to show the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, as defendants in the action; and the intervening defendants proposed answer to the complaint shall be deemed to be the answer on behalf of the intervening defendants and further service thereof upon the other parties shall not be required; and it is further

ORDERED, that the plaintiffs' motion to hold the said defendants and the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, in contempt of court, and for other related relief, is in all respects denied as against the defendants, New York State Department of Social Services, George K. Wyman, and the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris.

Dated: September 24th, 1971.

JOHN T. CURTIN,
United States District Judge.

Stipulations of Fact

In the
UNITED STATES DISTRICT COURT
for the Western District of New York

(Title Omitted In Printing.)

Now come the defendants by their attorneys, and the plaintiffs by their attorneys, and prior to the trial on this case agree and stipulate that Chapters 101, 102, and 298, §5 of the Laws of New York, 1971, N. Y. Dept. of Soc. Serv. Admin. Letters 71-PWD-34, 71-PWD-43, 71-PWD-48, 71-PWD-52, 71-PWD-54, 71-PWD-64, 71-PWD-75, N. Y. State Dept. of Soc. Serv. Bulletin Transmittal 71-MB-49, 18 N. Y. C. R. R. Part 385, 18 N. Y. C. R. R. Part 388, "Social Services in New York State . . . 1970" (104th Annual Report of the New York State Board of Social Welfare and the New York State Dept. of Social Services), 42 U. S. C. §602 (a) (19), and §§630-43, 45 C. F. R. §220.35, U. S. Department of Labor, Work Incentive Program Handbook, U. S. Department of Health, Education and Welfare "Guidelines . . . Work Incentive Program," a letter dated April 28, 1971 from HEW Regional Commissioner Elmer W. Smith to Defendant Wyman along with the interrogatories and the respective answers thereto, and along with all depositions in this case (to which it is stipulated that the answers by the parties and witnesses in said depositions are the same as the answers said parties would have given if they testified in open court), all of which are filed herein, are hereby offered into evidence by plaintiffs and defendants for all purposes and are hereby stipulated as evidence in this case. And further, the following stipulations are also made:

A. DEFINITIONS.

1. Home Relief ("HR") is a program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§157 *et sq.* for persons not covered by other programs of assistance in New York.

2. Veterans Assistance ("VA") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§168 *et seq.* and is part of the HR program.

3. Aid to Dependent Children ("ADC") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§343 *et seq.* New York is partially reimbursed for its expenditures under the ADC program by the United States government under the Federal program of Aid to Families with Dependent Children ("AFDC"), 42 U. S. C. §§601 *et seq.*

4. Aid to Dependent Children-Unemployed parent ("ADC-U") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§343 *et seq.* and specifically authorized by N. Y. Soc. Serv. L. §349 (B) (1-a). New York is partially reimbursed for its expenditures under the ADC-U program by the United States government under the Federal program of Aid to Families with Dependent Children-Unemployed Parent ("AFDC-U") established by 42 U. S. C. §607 *et seq.*

5. Old Age Assistance ("OAA") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§207 *et seq.* New York is partially reimbursed for its expenditures under the OAA program by the United States government under the Federal

program of Aid to the Aged, Blind or Disabled ("AABD") established by 42 U. S. C. §§1381 *et seq.*

6. Assistance to the Blind ("AB") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§282 *et seq.* New York is partially reimbursed for its expenditures under the AB program by the United States government under the Federal program of Aid to the Aged, Blind or Disabled established by 42 U. S. C. §§1381 *et seq.*

7. Aid to the Disabled ("AD") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§300 *et seq.* New York is partially reimbursed for its expenditures under the AD program by the United States government under the Federal program of Aid to the Aged, Blind or Disabled, established by 42 U. S. C. §§1381 *et seq.*

8. "WIN" refers to the Federal compulsory work program established for AFDC and AFDC-U recipients by the Social Security Act.

9. "Public Assistance" refers to HR, VA, ADC, ADC-U, OAA, AB and AD.

10. "New York Work Rules" refers to the statutes and regulations at issue in this case: Chapters 101, 102 and 298 §5 of the Laws of New York, 1971, N. Y. Dept. of Soc. Serv. Admin. Letters 71 PWD-34, 71 PWD-43, 71 PWD-48, 71 PWD-52, 71 PWD-54, 71 PWD-64 and 71 PWD-75, N. Y. State Dept. of Soc. Serv. Bulletin Transmittal 71 MB-49, and 18 N. Y. C. R. R. Part 385.

11. Under the New York Work Rules "Unemployed employable" refers to any applicant for or recipient of Public Assistance who is not unemployable and not employed full time.

12. Under the New York Work Rules, "Unemployable" refers to an applicant for or recipient of Public Assistance between the ages of 16 and 64 not subject to the requirements and sanctions of the New York Work Rules by reason of illness, significant or substantial incapacitation either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advancéd age; full-time attendance at school in the case of a minor; full-time satisfactory participation in an approved program of vocational training or rehabilitation, specifically including participating in WIN; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the appropriate Social Services department to obtain others to provide such care.

13. Under the New York Work Rules, "Vocational trainee unemployable" refers to an applicant or recipient of Public Assistance who is unemployable by reason of his "full-time satisfactory participation in an approved program of vocational training or rehabilitation."

14. Under the New York Work Rules, "Employability notification" refers to the letter or other mode of communication by which a recipient of public assistance is notified of classification as an unemployed employable recipient.

15. "7 day notice" refers to the form letter required by 18 N. Y. C. R. R. 351.26 to be sent to recipients found to be ineligible for or eligible for less public assistance informing them they will be ineligible to receive public assistance or that their grants will be reduced seven days from the date of the notice.

16. "Pretermination hearing" refers to the review, with right to present evidence and cross-examine, to which a recipient of public assistance is entitled prior to any proposed termination, suspension or reduction of a public assistance grant. Such review is made by a local Social Services official in a position superior to the official who approved the proposed termination, suspension or reduction, and who did not participate in making the proposed determination under review.

17. "Fair hearing" refers to the hearing at which an applicant for or recipient of public assistance may appeal to the Commissioner of DSS and contest certain decisions or actions of social service officials, including, but not limited to, denial, termination, suspension, or reduction of a public assistance grant, denial of an application for or discontinuance of any service required under applicable statutes, rules or regulations, and a determination that an applicant or recipient must participate in a service program.

18. The terms "case record," "case file" and "case history" refer to the entire file and all records maintained by the local DSS for the recipient of Public Assistance to whom reference is made.

19. New York State Department of Labor "Form ES-28" is the basic form for communications from SES employees to Social Services employees, with regard to reporting manpower actions taken with regard to unemployed employables and vocational trainee unemployables.

20. "Recipient" refers to any person whose needs are taken into consideration in determining the amount of a Public Assistance grant.

21. "Applicant" refers to any person whose needs would be taken into consideration in determining the amount of a

Public Assistance grant if such a grant were made but which are not taken into account because such person, though seeking Public Assistance, has not yet been determined eligible for such assistance, or has been determined ineligible and is appealing such determination.

22. "Grantee" refers to a recipient of Public Assistance to whom a Public Assistance grant for said grantee, or for said grantee and other recipients, is paid by check drawn to his order by the local DSS.

23. "DSS" refers to the Defendant New York State Department of Social Services.

24. "DOL" refers to the Defendant New York State Department of Labor.

25. "SES" refers to the New York State Employment Service.

26. "Public Works Project" refers to a project created pursuant to N. Y. Soc. Serv. L § 350-k.

B. GENERAL

27. On March 28, 1971, Governor Rockefeller sent a Special Message (the "Special Message") to the New York State Legislature calling for the passage of certain measures related to Public Assistance in New York State. That message called for passage of the provisions of the New York Work Rules.

28. Pursuant to the Special Message, the State Legislature enacted, and on April 7, 1971, the Governor signed into law, Chapter 101 of the Laws of 1971 which amended N. Y. Soc. Serv. L. § 164, and created a new § 350-k requiring the establishment of public works projects to which unemployed

employables receiving HR (pursuant to §164) and ADC or ADC-U (pursuant to §350-k, if projects for such recipients meet state and federal requirements) can be referred.

29. Pursuant to the Special Message, the State Legislature enacted, and the Governor signed into law on April 7, 1971, Chapter 102 of the Laws of 1971, which amended N. Y. Soc. Serv. L. §131 (4) to define an unemployed employable, to require unemployed employable applicants to report to SES for certification as to the unavailability of employment, prior to eligibility, and to require unemployed employable recipients, as a condition of continued eligibility, to report to offices of SES twice monthly to receive their Public Assistance checks, and to accept referrals to private employment or to work on public works projects. In addition, Chapter 102 amended N. Y. Soc. Serv. L. §131 (4) to require those recipients deemed unemployable by virtue of their participation in an approved program of vocational rehabilitation or training to report to SES twice monthly for a review of their progress in training, and, if said recipients are grantees, to pick up their public assistance checks.

30. The State Legislature further enacted, and the Governor signed into law on May 24, 1971, Chapter 298 of the Laws of 1971 which, among other things, clarified Chapter 102 of the Laws of 1971.

C. PLAINTIFFS

31. DOLORES DUBLINO, one of the named plaintiffs in this action, resides in Buffalo with her three minor children ages 18, 14, and 13. Ms. Dublino and her family are recipients of public assistance in the AFDC category, and she was enrolled in a Work Incentive Program training program at the time the New York Work Rules were applied

to her. A temporary restraining order was issued July 6, 1971, restraining enforcement of the New York Work Rules against Ms. Dublino. But for the temporary restraining order now in effect, Ms. Dublino would be required, pursuant to the New York Work Rules to personally pick up her semi-monthly public assistance checks at the SES office in Buffalo, in addition to the obligations imposed on her by the Work Incentive Program.

32. DORIS JIMERSON, one of the named plaintiffs in this action, is an American Indian who resides with her three minor children, ages 16, 14, and 11 on the Cattaraugus Indian Reservation, located in Southwestern Erie County, New York. On July 6, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Doris Jimerson. But for the temporary restraining order now in effect, Ms. Jimerson would be required to pick up her semi-monthly public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules.

33. JANIE LEE PHILLIPS, one of the named plaintiffs in this action, is 57 years old and resides alone in Buffalo. Ms. Phillips receives public assistance in the Home Relief category. On July 6, 1971, a temporary restraining order was issued restraining enforcement of the New York Work Rules against Ms. Phillips. But for the temporary restraining order now in effect, Ms. Phillips would be required to pick up her semi-monthly public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability. Ms. Phillips' right leg was amputated above the knee in an accident on a cotton plantation in Mississippi in 1965. Ms.

Phillips has not worked since that time and her prior work experience was limited to farm labor and housekeeping.

34. VIRGINIA MICHAEL, one of the named plaintiffs in this action, resides in Alden, New York, with her husband and her three minor children, ages 19, 18, and 16. At the time the New York Work Rules were implemented, Ms. Michael received public assistance in the ADC category for herself and her three minor children. Ms. Michael's husband is a recipient of public assistance in the OAA category. On July 6, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Michael. But for the temporary restraining order now in effect, Ms. Michael would be required to report in person at the SES office in Buffalo to pick up her semi-monthly public assistance checks and otherwise to comply with the New York Work Rules.

Alden, New York is located 22 miles east of Buffalo. The Michael family does not own a car and must rely on public transportation to travel to Buffalo. Bus fare is 70 cents one way and, because of bus schedules, a trip to Buffalo requires the better part of a full day.

35. MARIE MARFOGLIA, one of the named plaintiffs in this action, resides in Buffalo, New York with her six children, ages 16, 13, 12, 10, 8 and 4. She and her family receive public assistance in the ADC category. On July 6, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Marfoglia. But for the temporary restraining order now in effect, Ms. Marfoglia would be required to personally pick up her semi-monthly public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

36. OLLIE SWANSON, one of the members of the plaintiff class in this action, is a recipient of Home Relief and resides in Buffalo, New York. On July 26, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Swanson. But for the temporary restraining order, Ms. Swanson would be required to personally pick up her public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability. Ms. Swanson has complained of chronic leg ailments to caseworkers of the Erie County Department of Social Services, and she has stated that such ailments have prevented her from working for the past two years.

37. HENRIETTA HUNTER, one of the members of the plaintiff class in this action, resides in Buffalo with her three minor children who are all enrolled in high school. Ms. Hunter and her family are recipients of public assistance in the ADC category. On July 26, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Hunter. But for the temporary restraining order now in effect, Ms. Hunter would be required to personally pick up her public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

Ms. Hunter's case record, which is in the custody of the Erie County Department of Social Services, contains a form F319 with an attached note from the Edward J. Meyer Hospital signed by Dr. S. R. Michalski, M. D. Said note dated July 14, 1971 states that Ms. Hunter has tenosyrovitis of the left shoulder and left hand and also uterine bleeding

to excess and requires x-rays, lab tests and follow-up visits. Ms. Hunter was declared employable pursuant to the New York Work Rules and required to report to the SES office in the Ellicott Square Building to personally pick up her public assistance checks.

38. GLORIA McFARLAND, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance in the ADC category for herself and her three minor children, ages 6, 4, and 1 year. Ms. McFarland is enrolled in a training program for dental assistants operated by the State University of New York Urban Center at Buffalo and sponsored by the Work Incentive Program. Ms. McFarland attends classes five days a week from 9 A. M. to 5 P. M. in this program, which will continue until June, 1972.

On August 3, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. McFarland. But for the temporary restraining order now in effect, Ms. McFarland would be required to pick up in person her semi-monthly public assistance checks at the SES office, 950 Broadway, Buffalo, New York, and otherwise to comply with the New York Work Rules.

39. JOHN W. COOPER, a member of the plaintiff class, resides in North Syracuse, New York, with his wife and three children, ages 5, 4, and 1 year. Mr. Cooper and his family receive public assistance in the ADC-U category. In July, 1971, when the New York Work Rules were implemented, Mr. Cooper was a full-time student at the Central New York Tractor and Trailer Driving School located in Liverpool, New York. Mr. Cooper attended classes from 8 A. M. to 4 P. M. Monday through Friday. Mr. Cooper received this training under the sponsorship of the Federal Work In-

centive Program. On August 6, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Cooper. Mr. Cooper completed his training course on or about August 31, 1971. But for temporary restraining order now in effect, Mr. Cooper would be required to personally pick up his public assistance checks at the SES office in Syracuse, New York and otherwise to comply with the New York Work Rules.

40. BERTHA HEATH, a member of the plaintiff class in this action, resides in Syracuse, New York. Ms. Heath receives public assistance in the HR category. Ms. Heath is 64 years old and suffers from diabetes, arthritis, and heart disease. On August 8, 1971, a temporary restraining order was granted enjoining the enforcement of the New York Work Rules against Ms. Heath. But for the temporary restraining order now in effect, Ms. Heath would be required to personally pick up her public assistance checks at the SES office in Syracuse, New York and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

41. STAN FLEMING, a member of the plaintiff class in this action, resides with his wife in Syracuse, New York. Mr. Fleming receives public assistance in the HR category. Mr. Fleming failed to report to an assignment on a public works project. His stated reason for not reporting was that he had been advised by an employee of the Onondaga County DSS that he could attend a job interview, and also that the nature of his work relief assignment had been improperly explained to him. Mr. Fleming's case was closed effective July 20, 1971; Mr. Fleming claims he received no notice of the proposed case closing. On August 8, 1971, a temporary restraining order was granted enjoining the enforcement of

the New York Work Rules against Mr. Fleming. But for the temporary restraining order now in effect, Mr. Fleming would have been ineligible for public assistance for 30 days after the termination of his public assistance grant.

42. JAMES MORE, a member of the plaintiff class in this action, resides in Syracuse, New York. Mr. More receives public assistance in the HR category. Mr. More was assigned to a public works project, and his public assistance was thereafter terminated for failure to comply with the New York Work Rules. Mr. More claims to be unemployable by reason of a mental disability, as found by the Syracuse Family Court. His stated reason for failure to comply with the New York Work Rules was his inability to understand and follow the complex requirements of said Rules. On August 8, 1971, a temporary restraining order was granted enjoining the enforcement of the New York Work Rules against Mr. Fleming. But for the temporary restraining order now in effect, Mr. More would be ineligible for 30 days, unless a local departmental review or a State fair hearing decision reversed the finding that benefits should be terminated.

43. ROBERT ALLEN, a member of the plaintiff class in this action, resides in Syracuse, New York and receives public assistance in the HR category for himself. Because of illness and the promise of a job in the regular economy, Mr. Allen did not report for a work relief assignment on three days. When he reported for his offered regular job, the offer was withdrawn because Mr. Allen had a police record (petty larceny). Mr. Allen then presented himself to the DSS and offered to cooperate with them, but the DSS terminated his aid and closed his case.

On August 8, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules

against Mr. Allen. But for the temporary restraining order now in effect, Mr. Allen would be ineligible for public assistance for 30 days.

44. THEODORE STURDEVANT and his wife, Rose, members of the plaintiff class in this action, reside in Olean, New York, with their five children, ages 10 through one and one-half years. Mr. Sturdevant receives public assistance for himself and his family in the HR category. In July, 1971, Mr. Sturdevant was declared an unemployed employable recipient and was required to personally pick up his public assistance check in Olean, New York. On August 12, 1971, Mr. Sturdevant was told to report to a public works project at the Olean City Garage, located in Olean, New York. Mr. Sturdevant did not report to the public works project. His stated reason was that, from his experience working there while unemployed in 1965, he would be assigned menial work and would be looked down upon by the regular employees.

On August 20, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Sturdevant. But for the temporary restraining order now in effect, Mr. Sturdevant would be subject to sanctions for failure to comply with the New York Work Rules.

45. HAROLD H. LEVENE, a member of the plaintiff class in this action, resides in Binghamton, New York, with his wife, and they are recipients of public assistance in the Home Relief category. On September 3, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Mr. Levene.

On July 1, 1971, Mr. Levene picked up his first public assistance check at the SES office in Binghamton and at that time an SES office employee referred Mr. Levene to an em-

ployment interview for an office job at the Southern Tier Iron Works, which is in Conklin, New York, approximately three and one-half miles from Mr. Levene's home in Binghamton. Mr. Levene did not attend the scheduled interview because of lack of transportation available to him. The public bus company does not operate beyond the city limits, and Mr. Levene would have to travel by taxi (four to seven dollars round-trip) or walk or hitch-hike three and one-half miles from the City limits to the Iron Works for an employment interview; Mr. Levene does not own a car. The City of Binghamton Department of Social Services thereafter terminated public assistance for Mr. Levene by reason of his failure to comply with the requirements of the New York Work Rules. But for the temporary restraining order now in effect, Mr. Levene would have been ineligible for public assistance for 30 days after he failed to attend the job interview in Conklin, New York, unless a local departmental review or a State fair hearing decision reversed the finding that benefits should be terminated.

46. JOANNE SCOTT, a member of the plaintiff class in this action, resides with her six children, ages 13 through 7, in the Town of Pike, County of Wyoming, New York. Ms. Scott and her family are recipients of public assistance in the ADC category. In July, 1971, Ms. Scott was classified employable and notified that she was required to report semi-monthly to SES offices in Perry, New York. On or about August 25, 1971, Ms. Scott was referred for employment to the Champion Co. in Perry, New York. She stated at the interview that she could not accept work at that time due to the unavailability of child care and transportation. On or about August 31, 1971, Ms. Scott received a 7-day notice of termination for her failure to accept proferred employment. On September 22, 1971, a temporary restraining order was

granted enjoining enforcement of the New York Work Rules against Ms. Scott. But for the temporary restraining order now in effect, Ms. Scott would be subject to termination of public assistance for failure to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of non-compliance. Perry, New York, is located 14 miles from Ms. Scott's home in Pike, New York. Ms. Scott does not possess a driver's license and there is no public transportation in Wyoming County. Taxi fare is $14.00 per round trip.

47. CLARA BORNATIMER, a member of the plaintiff class in this action, resides in Pike, New York, with her six children, ages 10, 8, 5, and 4 (twins). Ms. Bornatimer and her family are recipients of public assistance in the ADC category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Bornatimer. But for the temporary restraining order now in effect, Ms. Bornatimer would be required to pick up her public assistance checks in person at the SES office in Warsaw, New York and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability. Warsaw, New York, is located 22 miles from Ms. Bornatimer's home. Ms. Bornatimer does not own a car nor possess a driver's license, and there is no public transportation in Wyoming County, New York.

48. LINDA SARGENT, a member of the plaintiff class in this action, resides in Medina, County of Orleans, New York, with her three minor children, ages 2, 4 and 1 year. On September 29, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Ms. Sargent. But for the temporary restraining order

now in effect, Ms. Sargent would be required to pick up in person her public assistance checks at the SES office in Albion, New York, and otherwise to comply with the New York Work Rules. Ms. Sargent is presently enrolled in classes at the Continental School of Beauty Culture, Ltd. located in Buffalo, New York, where she attends classes Monday through Friday from 9 A. M. to 4:45 P. M.

49. MUNIRA RAHIM, a member of the plaintiff class, is 53 years old and resides alone at 248 East Third Street, New York, New York. Ms. Rahim is a recipient of public assistance in the Home Relief category. On September 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Rahim. But for the temporary restraining order now in effect, Ms. Rahim would be required to pick up her public assistance checks at the SES office in New York and would be required to accept a referral to a public works project pursuant to the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

Ms. Rahim is being treated for a hiatus hernia condition which prevents her from working full time. When Ms. Rahim was asked to sign a form stating her willingness to participate in a public works project by working for the Department of Social Services, she added the words "when able" and signed the form. She was told that such an alteration was unacceptable, and when she refused to sign the statement without such qualification, Ms. Rahim was informed that her assistance grant would be terminated.

50. BEVERLY STONE is a member of the plaintiff class in this action residing in Albion, New York, with her eight children, ages 4 through 15 years. Ms. Stone and her family

receive public assistance in the ADC category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Stone. But for the temporary restraining order now in effect, Ms. Stone would be required to personally pick up her public assistance checks at the SES office in Albion, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

Ms. Stone has been unable to obtain adequate day care services. Ms. Stone resides six miles from the SES office in Albion; she does not own a car; and there is no public transportation available in Orleans County.

51. MARK EAMES, a member of the plaintiff class in this action, resides in Olean, County of Cattaraugus, New York, with his wife and two children, ages seven and six. Mr. Eames and his family receive public assistance in the ADC-U category. On August 19, 1971, Mr. Eames was referred to a public works project at the Olean Garage, Olean, New York. He reported on August 20, but left when no one could give him any information about his assignment. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mark Eames. But for the temporary restraining order, Mr. Eames would be required to personally pick up his public assistance checks in Olean, New York, and to report to work in a public works project at the City of Olean Garage in Olean, New York, or be subject to termination of his public assistance grant.

52. LAWRENCE WAGONER and his wife, Marian, members of the plaintiff class in this action, reside in Salamanca, County of Cattaraugus, New York, with their

one minor child, age 16. Mr. and Mrs. Wagoner receive public assistance in the HR category. On September 22, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Mr. and Mrs. Wagoner. But for the temporary restraining order now in effect, Mr. and Ms. Wagoner would be required to pick up their public assistance checks in person in Olean, New York, and otherwise to comply with the New York Work Rules.

The Wagoner family does not own a car, and public transportation to Olean from their home in Salamanca, New York, consists of one bus trip early in the morning and one returning in the evening.

53. RICHARD A. CHAMBERS, SR., a member of the plaintiff class in this action, resides in Olean, County of Cattaraugus, New York, with his wife and three children, ages 4, 3, and 13 months. Mr. Chambers receives public assistance in the HR category for himself and his family. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Chambers. But for the temporary restraining order not in effect, Mr. Chambers would be required to personally pick up his public assistance checks in Olean, New York, and to report to a public works project at the City of Olean Garage, to which he was referred on August 23, 1971.

At the time of his assignment to the public works project in Olean, New York, Mr. Chambers had arranged for his enrollment training as a tractor-trailer driver at the Masters Driving School in Niagara Falls, New York.

54. JAMES BARRETT, a member of the plaintiff class in this action, resides in Olean, County of Cattaraugus, New York, with his wife and two children ages 5 and 2. Mr.

Barrett receives public assistance for himself and his family in the HR category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Barrett. Mr. Barrett was referred on August 11, 1971 to a public works project at the City of Olean Garage, located in Olean, New York. Mr. Barrett first reported to the public works project as required on August 13, 1971, and he and two welfare recipients were assigned to the task of pulling weeds from a fence on City property. Mr. Barrett worked eight hours on August 13, 1971, but did not report thereafter. His stated reason was that passers-by had recognized him and Mr. Barrett felt humiliated and embarrassed. But for the temporary restraining order now in effect, Mr. Barrett would be subject to termination of his public assistance grant in 30 days.

55. BETTY GLENN, a member of the plaintiff class in this action, resides in the Village of Mongaup Valley, County of Sullivan, New York, with her three minor children, ages 15, 14 and 11 years. Ms. Glenn and her family receive public assistance in the ADC category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Glenn. But for the temporary restraining order now in effect, Ms. Glenn would be required to personally pick up her public assistance checks at the SES office in Monticello, New York, and otherwise to comply with the New York Work Rules.

Ms. Glenn does not own an automobile and does not have the use of an automobile available to her. During the Spring, Winter and Fall months there is no buss service available between her home in Mongaup Valley and Monticello, and during that period the only available transportation is by taxi cab (six dollars round-trip fare) or hitch-hike.

56. BETTY SALLIS, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance in the HR category. Ms. Sallis reported to the SES on August 13, 1971 to pick up her check and was told that no jobs were available. On or about August 20, 1971, Ms. Sallis's caseworker informed her that the SES had received a report that she had refused a job and that her aid would be terminated. Ms. Sallis continued to report to SES to pick up her checks. SES continued to refer her to jobs, none of which were available when she reported to the designated employers. On September 15, 1971, Ms. Sallis reported to SES and received no check, but she was still referred to a job opening which was not available when she reported for work. Because Ms. Sallis had received substantially less than her full public assistance entitlement since August 1, she was unable to pay her full rent for August and September. On September 17, 1971, Ms. Sallis was served with a summons in an eviction proceeding.

On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Sallis. But for the temporary restraining order now in effect, Ms. Sallis would be required to pick up in person her semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules.

57. CHARLOTTE JIMERSON, a member of the plaintiff class in this action, resides on the Cattaraugus Indian Reservation with her six children, ages 20, 18, 16, 13, 10 and 8. Ms. Jimerson and her family receive public assistance from the ADC category. Ms. Jimerson resides more than 30 miles from Buffalo. In order to travel to Buffalo, Ms. Jimerson must pay a neighbor one dollar for a ride to Irving, New York, which is the nearest bus stop; she must then take a bus

into Buffalo at a cost of $3 round trip; and because of bus schedules, the trip takes an entire day, so she must buy lunch in Buffalo.

On September 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Jimerson. But for the temporary restraining order now in effect, Ms. Jimerson would be required to personally pick up her public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules.

58. LAURA GILBERT, a member of the plaintiff class in this action, is a recipient of Home Relief residing along in Gowanda, County of Erie, New York. Ms. Gilbert does not own a car and in order to travel to Buffalo she must take a bus at a cost of $3 round trip. Ms. Gilbert objected to her classification as employable by reason of a history of emphysema and chronic leg pain. On September 9, 1971, a caseworker employed by the Erie County Department of Social Services sent Ms. Gilbert a "seven-day notice" requiring Ms. Gilbert to supply medical verification of her claim that she was not employable. For the past two years, Ms. Gilbert has been practicing the Christian Science Religion, which prohibits medical treatment. She did obtain a complete physical examination on or about September 15 and another on September 23, but was unable to obtain written verification within the required seven days. On September 29, 1971, the temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Gilbert. But for the temporary restraining order now in effect, Ms. Gilbert would be subject to sanctions for failure to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

59. DOROTHY LIVINGSTON, a member of the plaintiff class in this action, resides in the Village of Monticello, County of Sullivan, State of New York, with her two minor children ages 11 and 9 years. There is no publicly financed day care center in Monticello, and Ms. Livingston has tried without success to make satisfactory arrangements for babysitting. Starting October 7, 1971, Ms. Livingston was required to personally pick up her semi-monthly public assistance checks at the SES office in Monticello.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Livingston. But for the temporary restraining order now in effect, Ms. Livingston would be required to continue picking up her public assistance checks in person and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

60. LILLIE A. HARRIS, a member of the plaintiff class in this action, resides in Depew, County of Erie, New York, with her seven minor children, ages 15 through 5 years. Ms. Harris and her family receive public assistance in the ADC category. Ms. Harris is enrolled in an approved occupational training program at Erie County Community College in Williamsville, New York. On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Harris. But for the temporary restraining order now in effect, Ms. Harris would be required to personally pick up her public assistance checks at the SES office at Broadway and Fillmore in Buffalo, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing discussion reversed the finding of employability. Ms.

Harris states that no WIN counselor has ever discussed attendance or progress in training with Ms. Harris at the time she has picked up her public assistance checks.

61. DONNA BIELISKI, a member of the plaintiff class, resides in the Town of Medina, County of Orleans, New York, with her two children, ages two and three years. Ms. Bieliski receives public assistance in the ADC category. Ms. Bieliski attends classes five days a week from 9 A. M. to 4:45 P. M. at the Continental School of Beauth Culture, Ltd., located in Buffalo, New York, 45 miles west of Medina, New York.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Bieliski. But for the temporary restraining order now in effect, Ms. Bieliski would be required to personally pick up her public assistance checks in Albion, New York, located 11 miles east of Medina, New York.

62. NORMAN MICHAEL, a member of the plaintiff class in this action, resides in Alden, New York, with his mother and had been receiving public assistance in the ADC category until July, 1971; Norman Michael is 19 years old. In July, 1971 he was removed from ADC and told to apply for relief in the HR category. Mr. Michael accompanied an employee of the DSS to Buffalo, looking for employment; Mr. Michael was not informed of any further requirements. He received a letter dated September 1, 1971, denying his application for HR assistance for failure to present evidence of efforts to obtain employment. Mr. Michael lives 22 miles east of Buffalo and lacks transportation; Mr. Michael has applied for work at the Erie County Home and Infirmary, located one half mile from his home. The county refused to recognize any effect on Mr. Michael on a temporary

restraining order issued on July 6, 1971, on behalf of his mother Virginia Michael.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Norman Michael. But for the temporary restraining order now in effect, Norman Michael would be ineligible for public assistance, unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

63. Elvira Michael, a member of the plaintiff class in this action, resides in Alden, New York, with her mother and had been receiving public assistance in the ADC category until July, 1971. Elvira Michael is 18 years old. In July, 1971 she was removed from ADC and told to apply for relief in the HR category. Ms. Michael received a letter dated September 1, 1971 denying her application for HR assistance for failure to present evidence of efforts to obtain employment. Ms. Michael lives 22 miles east of Buffalo and lacks transportation. The County refused to recognize any effect on Ms. Michael of a temporary restraining order issued on July 6, 1971 on behalf of her mother Virginia Michael.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Elvira Michael. But for the temporary restraining order now in effect, Ms. Michael would be ineligible for public assistance unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

64. GEORGIA CASSEL, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance in the ADC category for herself and her son, age 18. Her daughter, age 19, formerly received ADC but is currently self-supporting. Ms. Cassel suffers from a

chronic shoulder pain resulting from a pinched nerve. The DSS required her to submit a doctor's statement, which she was unable to obtain when her doctor discovered that the statement was requested by the Welfare department. The doctor also refused Ms. Cassel further treatment. Ms. Cassel then began treatment at the outpatient clinic of Buffalo General Hospital. Her assistance was terminated effective September 16, 1971; her Medicaid card thus expired and she was unable to purchase the medication prescribed by the clinic.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Cassel. But for the temporary restraining order now in effect, Ms. Cassel would be ineligible for public assistance and Medicaid assistance, unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

65. GLADYS TAYLOR, a member of the plaintiff class in this action, resides with her six minor children in Colonie, County of Albany, State of New York. Ms. Taylor and her family received Social Security benefits and supplemental public assistance in the ADC category. Ms. Taylor has been hospitalized several times in the past two years for a heart condition which has substantially limited her capacity to undertake gainful employment. Ms. Taylor is presently enrolled in the SEEK Program (Search for Higher Education) as a full-time student at the State University of New York at Albany (SUNYA).

When Ms. Taylor objected to her status as an "unemployed employable recipient," the Albany Department of Social Services directed Ms. Taylor to obtain medical verification of her medical ailments within seven days, by

letter dated July 29, 1971. Ms. Taylor is a former resident of Syracuse, New York and has received the better part of her medical treatment at St. Joseph's Hospital, located in Syracuse, New York. Ms. Taylor was unable to obtain an appointment with that hospital until September 20, 1971. On August 16, 1971, the Albany Department of Social Services terminated public assistance to Ms. Taylor because she has not yet obtained medical verification of her ailments.

On October 14, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Taylor. But for the temporary restraining order now in effect, Ms. Taylor would be ineligible for public assistance, unless a local departmental review or a State fair hearing decision reversed the finding that benefits should be terminated.

66. HAROLD LUCE and his wife, UNA LUCE, members of the plaintiff class in this action, reside in Olean, New York, and Ms. Luce receives Medicaid assistance. Mr. Luce is retired on a pension and receives no public assistance. Ms. Luce has mild phlebitis and cannot stand for more than ten minutes; for that reason she has to take a cab to the SES office to pick up her checks.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. and Ms. Luce. But for the temporary restraining order, Ms. Luce would be required to appear in person at the SES office in Olean and otherwise to comply with the New York Work Rules, unless a local departmental review or State fair hearing reversed the finding of employability.

67. MARY GOODMAN, a member of the plaintiff class in this action, resides in Olean, New York, and receives public assistance in the HR category. On or about July 27,

1971, Ms. Goodman was told verbally that she was "employable" and that she would have to pick up her check personally at the SES office. Ms. Goodman has been chronically ill since 1961; she is a diabetic, has ulcers, has had major surgery four times, has a skin allergy, bad eyesight, lack of balance, and is currently under treatment for psychological problems.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Goodman. But for the temporary restraining order now in effect, Ms. Goodman would be required to pick up in person her semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules, unless a local departmental review or State fair hearing decision reversed the finding of employability.

68. WILLIAM MORGAN and his wife, LINDA MORGAN, members of the plaintiff class in this action, reside in Farmersville Station, New York, and receive public assistnace in the HR category. Mr. Morgan was unable to travel the 11 miles to the SES office in Olean in order to pick up his check because he does not have a car and there is inadequate public transportation in the country. Mr. Morgan's aid was terminated, his wife was made the grantee, and she was told to report to the SES office in Olean.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. and Ms. Morgan. But for the temporary restraining order now in effect, Mr. Morgan would be ineligible for aid for 30 days and Ms. Morgan would be required to pick up in person her semi-monthly public assistance checks at the SES office in Olean, New York, and otherwise to comply with the New York Work Rules.

69. PETER PLARRE, a member of the plaintiff class in this action, resides in Olean, New York, and receives public assistance in the ADC-U category for himself, his wife and their two minor children, ages 16 months and 1-1/2 months. Mr. Plarre is currently undergoing training in communications in a correspondence course conducted by the National Radio Institute; the cost of the training is being paid for by the Veterans Administration.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Plarre. But for the temporary restraining order now in effect, Mr. Plarre would be required to pick up in person his semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules.

70. VALARIA CRAY, age 20 years, and her sister, LINDA CRAY, age 18, reside with an aunt, Ruby Jones, in Buffalo, New York. Both Valaria and Linda Cray receive public assistance in the Home Relief category and both are members of the plaintiff class in this action. Valaria and Linda Cray are both full-time students at the State University of New York in Buffalo.

On October 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Valaria Cray and Linda Cray. But for the temporary restraining order now in effect, Valaria and Linda Cray would be required to personally pick up their public assistance checks at the Ellicott Square Building in Buffalo, New York, and otherwise to comply with the New York Work Rules.

71. BEVERLY WALDRON, a member of the plaintiff class in this action, resides in the Town of Holland, County

of Erie, State of New York with her two minor children, ages 10 and 6 years. Beverly Waldron and her family receive public assistance in the ADC category. Ms. Waldron resides in a rural area approximately 20 miles from Buffalo; she does not possess a driver's license; and states that she cannot arrange adequate care for her two children.

On October 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Waldron. But for the temporary restraining order now in effect, Ms. Waldron would be required to personally pick up her public assistance checks at the SES office in Buffalo, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

72. HENRIETTA SMITH, a member of the plaintiff class, resides with her two children, ages 8 and 7 years, in Buffalo, New York. Ms. Smith and her family receive public assistance in the ADC category. Ms. Smith is presently a full-time student at the State University College at Buffalo, where she is in her junior year majoring in courses in mental retardation sponsored by the Department of Exceptional Education.

On October 21, 1971, Ms. Smith picked up her check at the SES office in the Ellicott Square Building in Buffalo, New York. The SES employee, a Mr. Goodman, referred Ms. Smith to a job opening as a "go-go-girl" at a night club in Buffalo. Ms. Smith refused to attend that job interview. Her stated reason was that she felt the job was morally objectionable and inappropriate under her present circumstances as a mother and full-time student.

On October 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Smith. But for the temporary restraining order now in effect, Ms. Smith would be subject to possible sanctions for failure to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision made a determination to the contrary.

73. ELLEN RIVENBURGH, a member of the plaintiff class in this action, resides with her two children, ages two years and twenty-one months, in Rensselaur, New York. Ms. Rivenburgh and her family receive public assistance in the ADC category. To date Ms. Rivenburgh has been unable to arrange day care services for her children. Ms. Rivenburgh has made objections to employees of the Rensselaer County Department of Social Services that her children are too young to leave with a stranger and there their infancy is complicated by emotional problems.

On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Rivenburgh. But for the temporary restraining order now in effect, Ms. Rivenburgh would be required to personally pick up her public assistance checks at the SES office in Rensselaer, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

74. FLORENCE McMAHON, a member of the plaintiff class in this action, resides in Holly, County of Orleans, State of New York, with her two minor children. Ms. McMahon receives public assistance in the ADC category. Ms. McMahon does not own a car nor have the use of a car available to her, and there is no public transportation in

Orleans County. On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. McMahon. But for the temporary restraining order now in effect, Ms. McMahon would be required to personally pick up her semi-monthly public assistance checks in Albion, New York, and otherwise to comply with the New York Work Rules.

75. BILLY WHITE and his wife, BETTY WHITE, members of the plaintiff class in this action, reside in Salamanca, New York, and receive public assistance in the ADC-U category for themselves and their minor child, age five months. Mr. White, who is a veteran of the Armed Forces, has applied for job training. He must travel 18 miles each way to pick up his assistance checks and has had to depend on a relative for transportation.

On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. and Ms. White. But for the temporary restraining order now in effect, Mr. White would be required to pick up in person his semi-monthly public assistance checks at the SES office in Olean, New York, and otherwise to comply with the New York Work Rules.

76. CLINTON BRACTION, JR., a member of the plaintiff class in this action, resides in Lackawanna, New York, with his parents and four siblings. Mr. Braction is 17 and is included in his father's HR budget. Mr. Braction was referred to a job opening by SES, but no job opening existed when he reported to the designated employer. In September, 1971, Mr. Braction informed his caseworker that he would be returning to school to earn a High School Equivalency Diploma. On September 20, 1971, Mr. Braction received notice that he was removed from his family grant effective

September 1, 1971. SES maintained that Mr. Braction had failed to keep an appointment scheduled for September 3, 1971. Mr. Braction offered to prove by producing his employment card, that he did not have notice of the appointment. Ms. Harriss, the Unit Supervisor responsible for Mr. Braction's case, has stated that he is employable despite his status as a full-time student and that he will thus not be eligible even after a 30-day waiting period.

On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Braction. But for the temporary restraining order now in effect, Mr. Braction would be ineligible for public assistance for at least 30 days.

77. DAVID MAROTT, a member of the plaintiff class in this action, resides in Troy, New York, and receives public assistance in the HR category. Mr. Marott reported to SES and indicated that the only limit on his accepting employment was that he "could not work on a job that hurt people or the environment." Mr. Marott was referred to a job opening, but there were no positions open on the day shift and Mr. Marott could not work the night shift, public transportation, on which he depended, not being available at night. Mr. Marott continued to report to SES but was not referred to any jobs. He did not receive his grant for September 14, 1971, and DSS informed him that the check had been mailed; Mr. Marott received a letter dated September 13, 1971, telling him to report for work relief on September 17, 1971. On September 17, 1971, Mr. Marott went to the DSS office to inquire about his grant and to report for work relief. At that time he was told by Mr. John Flynn, a Social Services employee, that his case was closed and that he should disregard the work relief letter. The reasons given by

Mr. Flynn to Mr. Marott for his termination were that SES had indicated to the local Department of Social Services that his appearance (he has long hair and a beard) prevented SES from referring him for employment and that his statement that he "could not work in a job that hurt people and the environment" made him unavailable for work.

Mr. Marott received a letter on September 20, 1971, indicating that he could have a review of his termination, to be conducted by Mr. Flynn, on September 23, 1971. Mr. Marott called Mr. Flynn, who told him that a review would not held, that the case was already closed and that the review had been held on September 17, 1971.

Mr. Marott requested a fair hearing, which was held on October 6, 1971. On October 29, 1971, the decision to terminate Mr. Marott was affirmed. Mr. Marott did not receive any public assistance while his fair hearing was pending.

78. ERNEST SHAFFER and his wife, PHYLLIS SHAFFER, members of the plaintiff class in this action, reside in Little Valley, New York, and Mr. Shaffer receives public assistance in the ADC-U category for himself, his wife and their six minor children, ranging in age from 12 to 3. Mr. Shaffer has a part-time job at which he earns $35 to $40 a week. He has been referred to a public works project in Salamanca. He has difficulty reaching Salamanca from his rural home, and work on the project would interfere with his part-time job.

On November 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York State Work Rules against Mr. and Ms. Shaffer. But for the temporary restraining order now in effect, Mr. Shaffer would be required to pick up in person his semi-monthly public assistance check at the SES office and to work on a public

works project, and Mr. and Ms. Shaffer would be required otherwise to comply with the New York Work Rules.

79. MARY COLEMAN, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance for herself and her two children. Ms. Coleman is currently a full-time student at Buffalo State College under the "SEEK" program. Trips to pick up her checks and to participate on job interviews would interrupt her attendance at classes.

On November 24, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Coleman. But for the temporary restraining order now in effect, Ms. Coleman would be required to pick up in person her semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules.

80. DOLORES TROY, a member of the plaintiff class in this action, resides in Buffalo, New York, and is an applicant for public assistance for herself and her two minor children, ages 7 and 6. Ms. Troy is a Licensed Practical Nurse and is currently enrolled as a full-time student at the Cooperative College Center of SUNYAB. She expects to graduate in May, 1972, with an Associate Degree and with qualifications to be licensed as a Registered Nurse. When she applied for public assistance in November, 1971, she was informed by the DSS that the requirements of the New York Work Rules apply to her even though she is a full-time student. The application of these rules could result in Ms. Troy being forced to discontinue her education.

On November 24, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Troy. But for the temporary restraining order

now in effect, Ms. Troy would be required to pick up in person her semi-monthly public assistance checks and otherwise to comply with the New York Work Rules.

81. ANNA CALLAHAN, a member of the plaintiff class in this action, resides in Suffern, New York, is 61 years old and was an applicant for public assistance. Ms. Callahan was employed by Letchworth Village, an institution for the retarded, until August, 1971. At that time she was forced to retire because of problems with her feet. Ms. Callahan had had trouble with her feet for four years and has been under the care of Dr. Stanley Leshen, a podiatrist, who was still attending her at the time of her several applications for public assistance. In September, Ms. Callahan applied for assistance at the Rockland County DSS. A representative of that agency told her that she would have to accept employment as a condition of eligibility. That representative then referred Ms. Callahan to Mr. Harold Strunk of Mahwah, New Jersey for work as a housekeeper; that referral was made without first referring Ms. Callahan to the New York SES. Mr. Strunk hired Ms. Callahan as a housekeeper for $50.00/week plus room and board. Ms. Callahan was to cook, clean and do laundry for Mr. Strunk and his three children; her hours were to be seven days a week, eight hours a day, ending each day at 6:00 P. M. Some time later, Mr. Strunk attempted to require Ms. Callahan to work as an evening babysitter also. On or about November 20, 1971, Ms. Callahan submitted a note from her doctor to the DSS indicating that she should not stand "too much;" she spend an average of six hours a day on her feet maintaining the Strunks' seven-room house. For the above reasons Ms. Callahan was forced to leave her employ at the Strunks'. She reapplied for public assistance and was told that she was ineligible for aid for 75 days due to her leaving the Strunks' employ.

On December 7, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Callahan. But for the temporary restraining order now in effect, Ms. Callahan would be ineligible for public assistance, unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

82. ROBIN GRAY, a member of the plaintiff class in this action, resides in Waterport, New York (Orleans County), and receives public assistance in the ADC category for herself and her three minor children, ages 2 years, 1 year and 3 months. Ms. Gray must travel ten miles each way to pick up her public assistance check; she does not own a car; she cannot afford cab fare; and there is no public transportation in Orleans County. Ms. Gray is willing to work part-time in the evening, but she has no day-time baby-sitter and transportation. On explaining the situation to the DSS and SES, she was told, "That's not our problem."

On December 14, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Gray. But for the temporary restraining order now in effect, Ms. Gray would be required to pick up in person her semi-monthly public assistance checks at the SES office in Albion and otherwise to comply with the New York Work Rules, unless a local departmental review or State fair hearing reversed the finding of employability.

83. CAROLE KAMPSHOFF, a member of the plaintiff class in this action, resides in Albion, New York (Orleans County), and receives public assistance in the ADC category for herself and her two minor children, ages 14 and 13. Ms. Kampshoff must travel three miles each way to pick up her assistance check, and she has been referred for work at a location eleven miles from her home. She does not own a

car, cannot afford to pay a cab fare for these trips and for a daily trip to work, and there is no public transportation in Orleans County.

On December 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Kampshoff. But for the temporary restraining order now in effect, Ms. Kampshoff would be required to pick up in person her semi-monthly public assistance checks at the SES office in Albion and otherwise to comply with the New York Work Rules.

D. DEFENDANTS

84. Defendant New York State Department of Social Services ("DSS") is the agency responsible for the administration of public assistance in the State of New York and is responsible together with the defendant New York State Department of Labor for the administration of the New York Work Rules. DSS is charged, under N. Y. Soc. Serv. L. § 20 (3) [a] with general supervision of the local departments of social services, including those appearing as defendants in this action.

85. Defendant George K. Wyman is the Commissioner of the New York State Department of Social Services and is responsible for the administration of the programs of that agency.

86. Defendant New York State Department of Labor ("DOL") is responsible, together with the defendant DSS, for the administration of the New York Work Rules. The New York State Employment Service ("SES") is a subdivision of DOL and is the agency charged with implementing and enforcing those portions of the New York Work Rules for which DOL is responsible.

87. Defendant Louis L. Levine is the Industrial Commissioner of the State of New York and is responsible for the administration of the programs of DOL.

88. Defendant Erie County Department of Social Services is the agency responsible for the administration of public assistance and the New York Work Rules in Erie County.

89. Defendant George G. Sipprell is the Commissioner of the Erie County Department of Social Services and is responsible for the administration of the programs of that agency.

90. Defendant-Intervenor Onondaga County Department of Social Services is the agency responsible for the administration of public assistance and the New York Work Rules in Onondaga County, New York.

91. Defendant-Intervenor John L. Lascaris is the Commissioner of the Onondaga County Department of Social Services and is responsible for the administration of the programs of that agency.

E. OPERATION OF THE NEW YORK WORK RULES

(1) Empolyment Service Referrals

92. DSS has interpreted the New York Work Rules to require the local departments to assume that all applicants for or recipients of HR, VA, ADC and ADC-U are unemployed employables, unless contrary information is available or less the contrary is shown.

93. Each applicant for public assistance who is deemed an unemployed employable is required to report to SES to obtain a certification required by 18 N. Y. C. R. R. § 385.4 as a condition of the granting of assistance. If assistance is

granted, said applicant is deemed an unemployed employable recipient.

94. Each recipient who has been determined to be an unemployed employable recipient receives an employability notification, requiring the recipient to report to an office of SES twice monthly and informing the recipient of the obligation to accept proferred employment as a condition of continued eligibility for public assistance. If said unemployed employable recipient is the grantee, the grantee is further informed that henceforth the public assistance checks will not be mailed but rather must be picked up at SES on the grantee's semi-monthly reporting date.

95. Each vocational trainee unemployable receives notification, requiring the trainee to report to an office of SES twice monthly, to review the trainee's progress in training. If said vocational trainee unemployable is a grantee, the grantee is further informed that henceforth the public assistance check will not be mailed but rather must be picked up at SES on the trainee's semi-monthly reporting date.

96. The semi-monthly reporting date assigned to each unemployed employable recipient, and to each vocational trainee unemployable, is based on the recipient's Social Security number or Case number, and reporting dates can be altered only when SES's review of the schedule indicates the need to revise the schedule for all recipients in accordance with New York State Employment Service Bureau Procedures Manual §§ 17091 (1), (5).

97. The assistance grant of unemployed employable recipients is calculated on the same basis as the assistance grant of "unemployable" recipients.

98. On the day on which an unemployed employable recipient grantee or vocational trainee unemployable grantee is required to report to SES, the check made out to that person is being held by SES.

99. If unemployed employable grantees and vocational trainee unemployable grantees do not appear at the scheduled date and time, their checks are held by SES through an additional day before being returned to the local Department of Social Services.

100. There is no requirement that unemployed employable grantees and vocational trainee unemployable grantees required to report to SES at a scheduled date and time be notified that they may obtain their checks at SES up to an additional day beyond the scheduled day.

101. If an unemployed employable grantee and vocational trainee unemployable grantee fails to pick up his check at SES within an additional day after his scheduled appointment, the check is automatically returned to the local Department of Social Services and a 7-day notice is issued to the recipient, in the absence of a change in circumstances brought to the attention of the Department.

102. When an unemployed employable recipient or applicant or vocational trainee unemployable reports to SES he is interviewed by an employee of SES.

103. Unemployed employable grantees and vocational trainee unemployable grantees are given their public assistance checks when they report to SES whether or not they cooperate with SES personnel.

104. Unemployed employable grantees and vocational trainee unemployable grantees are not specifically informed upon reporting to SES that they may obtain the check then

being held by SES whether or not they cooperate with SES personnel.

105. No funds have been appropriated by the State of New York under the New York Work Rules for training, transportation, child care, testing, or counseling or to reimburse expenses incurred by recipients and applicants in fulfilling their obligations under the New York Work Rules.

106. In July, 1971, the first month of operation of the New York Work Rules, according to statistics prepared by DSS, 48,609 persons were required to report to SES. Of this number, 14,035 were referred to jobs, and 1,127 were referred to training. Of the 14,035 persons referred to jobs, 1,861 were placed; of the 1,127 persons referred to training, 500 were placed.

107. In July, 1971, according to statistics prepared by DSS, 11,899 persons were considered by the local Departments of Social Services to have failed to comply with the requirements of the New York Work Rules. Of these, 8,108 persons failed to report to SES, while 3,791 persons were considered to have failed to accept, report for, or continue employment or training. The public assistance grants of 5,265 persons were terminated for non-compliance with the New York Work Rules.

108. In August, 1971, according to statistics prepared by DSS, 55,480 persons, consisting of 10,164 applicants and 45,316 recipients, were required to report to SES pursuant to the New York Work Rules. Of this number, 18,806 persons were referred to jobs and 1,316 were referred for training. Of the 18,806 persons referred for jobs, 3,405 were placed; of the 1,316 referred for training, 1,169 were placed.

109. In August, 1971, according to statistics prepared by DSS, 14,480 persons were considered by the local Depart-

ments of Social Services to have failed to comply with the requirements of the New York Work Rules. Of these, 9,236 persons failed to report to SES, while 5,144 persons were considered to have failed to accept, report for or continue employment or training. The public assistance grants of 4,379 persons were terminated for non-compliance with the New York Work Rules.

110. In September, 1971, according to statistics prepared by DSS, 55,598 persons were required to report to SES pursuant to the New York Work Rules. Of this number, 18,585 were referred to jobs, and 1,201 were referred for training. Of the 18,585 persons referred for jobs, 4,110 were placed; of the 1,201 referred for training, 287 were placed.

111. In September, 1971, according to statistics prepared by DSS 14,015 persons were considered by the local Department of Social Services to have failed to comply with the requirement of the New York Work Rules. Of these, 8,928 persons failed to report to SES, while 5,087 persons were considered to have failed to accept, report for or continue employment or training. The public assistance grants of 4,269 persons were terminated for non-compliance with the New York Work Rules. The cases of 2,756 applicants considered to have failed to comply were still pending, and the disposition of the cases of 1,466 persons in New York City who were considered to have failed to comply after reporting to SES is unknown.

112. According to statistics prepared by DSS for the period from July 1, 1971 to September 30, 1971, a total of 9,376 unemployed employable applicants or recipients were placed in jobs pursuant to the New York Work Rules.

113. According to statistics prepared by DOL and SEC, for the period from July 1, 1971 to September 30, 1971, 5,812

unemployed employable applicants or recipients were placed in jobs by SES. Of that number, the following numbers and percentages of unemployed employables (the total does not add to 100% because the percentages are rounded to the nearest 0.1%) were placed in jobs in each of the following "occupational categories and divisions":

	Individuals	%
"PROF TECH MGR"	86	1.5%
"CLERICAL"	657	11.5%
"SALES"	214	3.7%
"DOMESTIC"	309	5.3%
"OTHER SERVICES"	1,387	23.9%
"FARM F & F"	107	1.8%
"PROCESSING"	446	7.7%
"MACHINE TRADES"	326	5.6%
"BENCHWORK"	661	11.4%
"STRUCTURAL WORK"	450	7.7%
"MOTOR FRT TRANSP"	415	7.1%
"PKG MATERIALS HDLG"	714	12.3%
"OTHER"	40	0.7%
	5,812	100.2%

114. According to statistics prepared by DOL and SES, for the period from July 1, 1971 to September 30, 1971, a total of 32,253 individuals registered with SES were placed in jobs. Of these, 5,812 were unemployed employables and 26,441 were registered with SES independent of the New York Work Rules. Of the 26,441 persons who were not unemployed employable recipients or applicants, the following number and percentages (the total does not add to 100% because the percentages are rounded to the nearest

0.1%) were placed in jobs in each of the following "occupational categories and divisions:"

	Individuals	%
"PROF TECH MGR"	1,298	4.9%
"CLERICAL"	6,305	23.8%
"SALES"	976	3.8%
"DOMESTIC"	886	3.6%
"OTHER SERVICES"	4,510	17.1%
"FARM F & F"	396	1.5%
"PROCESSING"	853	3.2%
"MACHINE TRADES"	1,385	5.2%
"BENCHWORK"	3,840	14.5%
"STRUCTURAL WORK"	1,687	6.4%
"MOTOR FRT TRANSP"	1,200	4.5%
"PKG MATERIALS HDLG"	2,925	11.1%
"OTHER"	180	0.7%
	26,441	100.3%

115. As of January 1, 1971, according to the New York State Board of Social Welfare and the New York State Department of Social Services statistics, of the 1.8 million persons who had received public assistance the previous year, about 6% were considered employable, considering age, physical capabilities and circumstances in their households; of these, over half were employed—but with insufficient income to support their families; the remainder were totally unemployed and included many recipients who have never been employed as well as those who lack education, training or skill necessary to obtain employment currently.

116. The New York State Department of Social Services requires the local Department of Social Services to report monthly (a) the number of applicants and recipients required to report to SES and the number of applicants and recipients who failed to report to SES; (b) the number of persons referred to jobs or training and the number of persons placed; (c) the number of persons who failed to comply with the New York Work Rules; (d) the disposition of such non-compliance cases; and (e) the total net budget reduction achieved through the operation of the New York Work Rules.

117. DSS has not compiled, nor required local Departments of Social Services to report, the types of jobs and the wages paid on jobs to which recipients and applicants have been referred or placed by SES. DOL and its agent SES have compiled information as to the types of jobs in which recipients have been placed, but have not compiled information on referrals. Information as to wages paid to recipients and applicants who have been placed was not compiled by SES for the period from July 1, 1971 to November 1, 1971.

118. DSS, DOL and SES have not compiled information on recipients and applicants placed in jobs or training that would indicate the period of time such persons remain in such jobs or training. DSS does not collect information that would indicate the number of temporary jobs to which referrals are made.

2. GOOD CAUSE AND HEARING RIGHTS

119. A recipient or applicant does not have the right to a determination hearing or a fair hearing on the issue of em-

ployability prior to incurring the obligations of an unemployed employable recipient or a vocational trainee unemployable. A recipient classified as an unemployed employable or vocational trainee unemployable must comply with the New York Work Rules or be subject to grant termination or reduction; an unemployed employable applicant must comply with the New York Work Rules or be subject to grant denial. A recipient may contest the determination of employability at a pretermination hearing or fair hearing on grant termination or reduction for non-compliance with the requirements of the New York Work Rules. An applicant may contest the determination of employability at a fair hearing on the propriety of grant denial for non-compliance with the New York Work Rules.

120. Failure to comply with any requirement of the New York Work Rules subjects the recipient to the possibility of termination or reduction and the applicant to the possibility of denial of assistance for 30 days or until such person is willing to comply after 30 days, unless the non-compliance was with "good cause." Non-compliance with the New York Work Rules includes but is not limited to, failure to report to SES on the required semi-monthly reporting date, failure to report to SES or a prospective employer for an employment interview, failure to accept a referral for employment or training or failure to report to or participate in a public works project.

121. Termination of employment by an HR recipient without good cause constitutes failure to comply with the New York Work Rules, and subjects said recipients to termination of assistance for 75 days.

122. Neither lack of funds nor lack of adequate means of transportation at a reasonable cost constitutes good cause

for failure of recipients or applicants to appear at SES when otherwise required to do so pursuant to the New York Work Rules.

123. Lack of funds to meet the cost of keeping an appointment with a prospective employer for an interview, to which a recipient or applicant has been referred by SES pursuant to the New York Work Rules, does not constitute good cause under the New York Work Rules.

124. It is not good cause for refusing a referral to employment pursuant to the New York Work Rules that the skills or experience required by the job are either greater than or less than the skills and experience of the recipient or applicant.

125. Upon receipt of a report from a prospective or current employer that an unemployed employable recipient or applicant has failed to accept, report for, or continue in employment or training, or upon the determination by an SES employee that the recipient has failed in any way to comply with the requirements of the New York Work Rules, SES automatically refers such recipient's or applicant's case, via form ES28 to the local Department of Social Services, which may then issue a 7-day notice to the recipient.

126. The determination of "good cause" for a recipient's non-compliance with the requirements of the New York Work Rules is initially made by the local Department of Social Services, at a pretermination hearing; if assistance is terminated or reduced, a further determination on this issue may be made by DSS at a fair hearing.

F. WIN

127. The State of New York has adopted WIN, a program of compulsory work and training for ADC and ADC-U recipients which was established by the Social Security Act (See 42 U. S. C. §§ 602a(7) and (19) and 630 *et seq.*).

128. All "appropriate" recipients of ADC and ADC-U must be referred to WIN; Recipients of ADC and ADC-U, whether or not "appropriate" for WIN, may volunteer for WIN.

129. The local Department of Social Services determines which recipients of ADC or ADC-U are "appropriate" for referral to WIN, in accordance with procedures and guidelines contained in State and Federal statutes, regulations, and operational manuals.

131. Prior to his having to fulfill the requirements of the WIN program, a recipient of ADC or ADC-U determined "appropriate" for WIN has a right to a fair hearing by the Department of Social Services on the issue of his "appropriateness."

132. Once having been determined to be "appropriate" for referral to WIN, an ADC or ADC-U recipient is referred to the WIN program. Upon the recipient's enrollment in WIN, the Department of Labor is required to prepare an "employability plan" for the recipient, outlining the services and training necessary to achieving self-sufficiency. The recipient may be referred for employment, or to institutional or on-the-job training, in accordance with the employability plan.

133. Once enrolled in WIN, a recipient who refuses an assignment to employment or training is entitled to a hearing

by WIN personnel on whether such refusal is without good cause.

134. If a WIN enrollee is found to have refused employment or training without good cause, his participation in WIN is terminated. He may then be subject to termination of public assistance, but is entitled to a local pre-termination hearing and a State fair hearing on his termination from public assistance. The recipient is entitled to 60 days of counseling prior to the termination of benefits, during which the Department of Social Services continues to provide assistance to the recipient and the recipient's family.

135. As of June 30, 1971, of the 14,247 participants in the WIN program in New York State, 6951 or 48.8% were participants in Basic Education, Institutional Training, Regular on-the-job training, or other vocational training.

G. PUBLIC WORKS

136. Chapter 101 of the Laws of New York, 1971, amended N. Y. Soc. Serv. L. § 164 to require the creation of public works projects for recipients of HR in the State of New York.

137. Chapter 101 of the Laws of New York, 1971, created a new section, 350-k, of the New York Social Services Law, which required the creation of public work projects meeting state and federal requirements for recipients of ADC and ADC-U in the State of New York.

138. After consultation with the U. S. Department of Health, Education and Welfare, DSS decided not to promulgate regulations implementing N. Y. Soc. Serv. L. § 350-K.

139. The public works projects mandated by Chapter 101 of the Laws of New York, 1971, are projects in which unemployed employables engage in work for governmental agencies in return for their Public Assistance grants. Such work is performed for that number of hours each month which, when multiplied by the per hour credit assigned to such work, equals the amount of the monthly Public Assistance grant of the recipient and his family. An unemployed employable recipient participating in a public works project may not be compelled to work longer than the period required to earn the amount of the monthly Public Assistance grant. There is no authorization in the New York Work Rules for a monetary payment, in excess of the monthly public assistance grant, for participation in a public works project, other than payment for transportation expenses.

140. Under the New York Work Rules a local DSS has an option of either establishing and administering public works projects itself or contracting with DOL for the establishment or administration of such projects. To date, no such projects have been established and administered by DOL.

141. Referrals to public works projects established by a local DSS are made solely by the local DSS. An unemployed employable who has previously been required to report to SES pursuant to the New York Work Rules and for whom SES has been unable to secure employment or training, will be referred by SES back to the local DSS for subsequent referral to public works projects.

142. Many of the tasks performed by recipients assigned to public works projects would, in the absence of such recipients, ordinarily be performed by regular employees of the particular governmental agencies involved.

143. Participants in public works projects are not employees of the governmental agencies for which they are working, and are not entitled to union wages, fringe benefits, or retirement benefits.

144. It is not good cause for refusal to accept referral to a public works project or for leaving such a project that the recipient objects that

(a) The work to be performed is inconsistent with his or her work history, or

(b) The work to be performed is not genuine employment and limits the recipient's opportunity to look for permanent employment.

Date: 1/12/72. /s/ MICHAEL A. O'CONNOR,
Attorney for Plaintiffs.

Date: 1/12/72. /s/ DENNIS R. YEAGER,
Attorney for Plaintiffs.

LOUIS J. LEFKOWITZ,

Date: ..... By .....,
Attorney for Defendants,
New York State Department of Social Services, and George K. Wyman, New York State Department of Labor, and Louis L. Levene.

Date: ....,
Attorney for Defendants,
Erie County Department of Social Services and George G. Sipprell.

Date: ....,
Attorney for Defendant-Intervenors,
Onondaga County Department of Social Services and John L. Lascaris.

List of Exhibits.

In the

UNITED STATES DISTRICT COURT

For the Western District of New York

(Title Omitted in Printing.)

Attorneys for Plaintiffs and for the State Defendants have agreed to the submission of the following exhibits for consideration of the Court. Each exhibit is designated by a number. All of the exhibits are joint exhibits except the following: Exhibits 19, 25, 36, and 37 are Plaintiffs' Exhibits and Exhibits 43 and 44 are Defendants' Exhibits. Where the exhibit already has been placed in the record, a cross reference is made to the document in which it appears; where the exhibit has not appeared elsewhere, a copy is attached.

1. Chapter 101, N. Y. Laws of 1971 (copy attached).

2. Chapter 102, N. Y. Laws of 1971 (copy attached).

2A. Chapter 298, N. Y. Laws of 1971 (copy attached).

3. 18 N. Y. C. R. R. Part 385 (Exhibit 1, Answers of Defendants DSS and Wyman to Plaintiffs' First Interrogatories [Hereafter "DSS Answers to Interrogatories"]).

4. Bulletin 26, DSS Transmittal No. 71 MB 49 (Exhibit 11, DSS Answers to Interrogatories).

5. DSS Administrative Letter No. 71 PWD-34 (Exhibit 3, DSS Answers to Interrogatories).

6. DSS Administrative Letter No. 71 PWD-43 (Exhibit 4, DSS Answers to Interrogatories).

7. DSS Administrative Letter No. 71 PWD-48 (Exhibit 5, Answers to Interrogatories).

List of Exhibits.

8. DSS Administrative Letter No. 71 PWD-52 (Exhibit 6, DSS Answers to Interrogatories).

9. DSS Administrative Letter No. 71 PWD-54 (Exhibit 7, DSS Answers to Interrogatories).

9A. DSS Administrative Letter No. 71 PWD-64 (Exhibit 8, DSS Answers to Interrogatories).

10. DSS Administrative Letter No. 71 PWD-71 (copy attached).

11. DSS Administrative Letter No. 71 PWD-74 (Exhibit 9, DSS Answers to Interrogatories).

12. DSS Administrative Letter No. 71 PWD-75 (Exhibit 10, DSS Answers to Interrogatories).

13. DSS Administrative Letter No. 71 PWD-87 (copy attached).

14. DSS Administrative Letter No. 71 PWD-91 (copy attached).

15. DSS Administrative Letter No. 71 PWD-101 (copy attached).

16. Letter from U. S. Department of Health, Education & Welfare Regional Commissioner Elmer W. Smith to George K. Wyman, dated April 28, 1971 (Exhibit 2, DSS Answers to Interrogatories).

17. Letter from U. S. Department of Health, Education & Welfare Regional Commissioner Elmer W. Smith to George K. Wyman, dated April 21, 1971 (copy attached).

18. Letter of Ed Shannon, Albany County DSS (copy attached). (This letter was introduced as Exhibit O at the Deposition of Edward Phillips.)

19. New York Times Article, 8/26/71 (copy attached). (This article was introduced as Exhibit 3 at the Deposition of Jule K. Sugarman [hereafter "Dep. of Sugarman"].)

20. Albany County DSS Form 1775 (copy attached). (This form was introduced as Exhibit B at the Deposition of Mervyn Schwartz, Willie Mae Keaton and George J. Demmon [hereafter "Dep. of Schwartz, Keaton and Demmon"].)

21. Erie County DSS 7-Day Form Letter (copy attached). (This form was introduced as Exhibit A at the Deposition of Edwin L. Nowak and Janet Stroman [hereafter "Dep. of Nowak and Stroman"].)

22. Letter of K. L. Smith to Clifton Rice, 9/2/71 (copy attached). (This letter was introduced as Exhibit B, Dep. of Nowak and Stroman.)

23. Memorandum from William J. Magner, Erie County DSS, 8/20/71 (copy attached). (This letter was introduced as Exhibit D, Dep. of Nowak and Stroman.)

24. Memorandum from George G. Sipprell, Erie County DSS, 6/14/71 (copy attached). (This letter was introduced as Exhibit A, Dep. of Schwartz, Keaton and Demmon.)

25. Press Release, N. Y. City DSS, 6/14/71 (copy attached). (This release was introduced as Exhibit 4, Dep. of Sugarman.)

26. N. Y. SES Form ES 28 (copy attached).

27. Onondaga County DSS "Work Reform Policy and Procedures" (copy attached). (This document was introduced as Exhibit D at the Deposition of Phillip C. Pinsky [hereafter "Dep. of Pinsky].)

28. Onondaga County DSS Employability Notification Form Letter (copy attached). (This form letter was introduced as Exhibit E, Dep. of Pinsky.)

29. Onondaga County DSS 7-Day Form Letter (copy attached). (This form letter was introduced as Exhibit F, Dep. of Pinsky.)

30. Onondaga County DSS Reports of Employment Referrals (copies attached). (These reports were introduced as Exhibit G, Dep. of Pinsky.)

31. Onondaga County DSS Reports of Work Relief Referrals. (These records are attached as Exhibit G, Dep. of Pinsky.)

32. "Operations" Employment Service and Unemployment Insurance, June, 1971, Vol. 33, No. 6 (copy attached).

33. "Social Services In the State of New York, Social Service in New York . . . 1970" (104th Annual Report of the N. Y. State Board of Social Welfare and the N. Y. State DDS) (copy attached.)

34. "Employment Service Activities for Welfare Clients, New York State, 1968-70," N. Y. DOL Research Bulletin 1971, No. 2 (copy attached).

35. "Characteristics of AFDC Families in New York State, May, 1969," N. Y. State DSS Program Analysis Report No. 44 (Dec. 1970) (copy attached).

36. Community Council of Greater New York, Report I through IV on Operations of the New York Work Rules (copies attached).

37. Letter from Mary E. Switzer, H. E. W. Admin. to William H. Burson, Director Georgia State Department of Family and Children Services (copy attached).

List of Exhibits.

38. Governor's Message, 3/29/71 (copy attached).

39. New York State DSS Regulation 18 N. Y. C. R. R. § 385.5 as amended (copy attached).

40. Joint Reports Submitted to Governor of the State of New York, DSS and DOL (copies attached).

41. 1971 Amendments to WIN, Public Law 92-223 (a copy of these amendments as they appeared in the Congressional Record, Dec. 14, 1971 at S21641, is attached).

42. "Placements and Hourly Earnings, by Occupation, of Public Assistance Recipients Reporting to the Division of Employment Under Section 131.4 of the New York State Social Service Law," DOL Division of Employment, Research and Statistics, 12/15/71 (copy attached).

43. Report of the Sub-Committee on Welfare Reform, N. Y. State Temporary Commission to Revise the Social Service Law, January, 1972 (copy attached).

44. Excerpts of remarks by George K. Wyman, January 20, 1972 (copy attached).

45. U. S. Department of Health, Education & Welfare, "Guidelines, . . . Work Incentive Program" (copy attached).

46. U. S. Department of Labor, "Work Incentive Program Handbook" (copy attached).

Respectfully submitted,

Dated: February 18, 1972, New York, N. Y.

/s/ DENNIS R. YEAGER,
Attorney for Plaintiffs,
401 West 117th Street,
New York, N. Y. 10027,
(212) 280-4112.

Letter Objecting to Certain Exhibits.

(Seal)

COUNTY OF ONONDAGA

Department of Social Services

County Office Building
Syracuse, N. Y. 13202

January 31, 1972

John L. Lascaris
Commissioner

Mayer Freed, Esq.
National Employment Law Project
401 West 117th Street
New York, New York 10027

Re: Dublino vs. Wyman, et al.

Dear Mr. Freed:

We have reviewed your list of proposed exhibits dated January 17, 1972. We understand that the attorney general's office will propose to add at least two additional exhibits. Apart from these additions, we have the following objections to your list:

We will object to the admission of the New York Times article and of all reports by the Community Council of Greater New York and of the letter from the HEW employee to the State of Georgia.

In short, documents not constituting statistics or statements by New York State agencies or local welfare agencies within the State of New York will be objected to by us.

Exhibit 2A.

Please be further informed that we will also object to any reference in your brief or otherwise to affidavits submitted by you on applications for temporary injunctions. Those affidavits are not depositions on which cross examination was available and we do not believe that they are admissible under the Federal Rules of Civil Procedure. Those affidavits are not referred to in the Stipulations of Fact and we would never have agreed to incorporate those affidavits in any stipulation. We assumed that you included in your proposed stipulation any facts regarding individual members of the plaintiff class which you determined relevant or material.

Very truly yours,

LEGAL DIVISION,
Leonard C. Koldin,
Leonard C. Koldin,
Chief Welfare Attorney.

LCK/ac

CC: Jean Coon, Esq.
Mario C. Gambacorta, Esq.
Michael O'Connor, Esq.

Exhibit 2A.

Laws of New York.—By Authority

CHAPTER 298

AN ACT to amend the social services law, in relation to clarifying provisions relating to public assistance and medical assistance; and use of sub-professionaf staff by local social services districts

Exhibit 2A.

Became a law May 24, 1971, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision three of section three hundred sixty-five-a of the social services law, as added by chapter one hundred thirty-one of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

3. Notwithstanding the provisions of subdivision two of this section, medical assistance rendered to eligible persons who are not receiving or eligible for public assistance or care under the provision of any other title of this chapter, shall be limited to services of qualified physicians and such care and services as specified in paragraphs (b), (c), (*d*), [and] (h) *and* (*i*) in subdivision two above.

§ 2. Such law is hereby amended by adding thereto a new section, to be section ninety-six, to read as follows:

§ 96. *Use of subprofessional staff. Any inconsistent provision of law, general, special or local notwithstanding, a local social services district shall provide for the training and use of subprofessional staff, with particular emphasis on the use of public assistance recipients in accordance with state and federal requirements.*

§ 3. Section one hundred thirty-one-a of such law, as amended by chapter one hundred thirty-three of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

§ 131-a. Monthly grants and allowances of public assistance. 1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall, in

Exhibit 2A.

accordance with the provisions of this section and the rules and regulations of the department, provide home relief, veteran assistance, old age assistance, assistance to blind, aid to the disabled and aid to dependent children, to needy persons who constitute or are members of a family household, who are determined to be eligible in accordance with standards of need established in subdivision two [except as otherwise provided]. Provision for such persons, for all items of need, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall be made in accordance with the provisions of this section. Such provision shall be made in monthly or semi-monthly allowances and grants within the limits of the schedules included in subdivision three of this section except for additional amounts which shall be included therein for shelter, fuel for heating, additional cost of meals for persons who are unable to prepare meals at home and for other items for which specific provision is otherwise made in article five of this chapter. 2. The following schedule shall be the standard of *monthly* need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
$84	$134	$179	$231	$284	$329

For each additional needy person in the household there shall be added an additional amount of forty-five dollars monthly.

Explanation—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

Exhibit 2A.

In addition to the above, the standard of need shall include amounts for shelter and fuel for heating, amounts for additional cost of meals for persons who are unable to prepare meals at home and amounts for other items when required by individual case circumstances for which specific provision is otherwise made in article five of this chapter.

3. Persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two *less any available income or resources which are not required to be disregarded by other provisions of this chapter,* shall receive maximum monthly grants and allowances in all social services districts in accordance with the following schedules: (a) in all social services districts, for old age assistance, assistance to the blind, and aid to the disabled:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
$84	$134	$179	$231	$284	$329

For each additional eligible needy person in the household there shall be an additional allowance of forty-five dollars monthly.

(b) in all social services districts, for home relief, including veteran assistance, and aid to dependent children:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
$76	$121	$161	$208	$256	$296

For each additional eligible needy person in the household there shall be an additional allowance of forty-one dollars monthly.

4. If federal requirements make it necessary to adjust any schedule of grants and allowances, or part thereof, the department shall made such adjustments but the adjusted schedule of grants and allowances shall not exceed the [maximums provided] *schedule of monthly amounts* in subdivision two above.

5. In order that the legislature may, from time to time, consider adjustments to reflect changes in the cost of living, the department shall annually make an appropriate report to the governor and the legislature, which report shall include the recommendations of the department relating thereto.

6. Notwithstanding any other provisions of this chapter or other law, social services official may make provisions for the following items and services: (a) replacement of necessary furniture and clothing for persons in need of public assistance who have suffered the loss of such items as the result of fire, flood or other like catastrophe, provided provisions therefor cannot otherwise be made;

(b) purchase of necessary and essential furniture required for the establishment of a home for persons in need of public assistance, provided provision therefor cannot otherwise be made;

(c) essential repair of heating equipment, cooking stoves, and refrigerators used by persons in need of public assistance in their homes, provided provision therefor cannot otherwise be made;

(d) day care in a day care center, in a family home or approved "in home day care" provided the homemaker is employed, receiving occupational training, physically or mentally incapacitated, or in cases where family duties away from home necessitate her temporary absence, including

provision for Workmen's Compensation and other benefits as required by law when the "in home day care" is in the recipient's own home; homemaker service essential to meet social needs from an approved social agency provided such service is not available through the staff of the social services district; housekeeping services for a recipient who is unable to perform housekeeping tasks when not provided by the staff of the social services district, including provisions for Workmen's Compensation and other benefits as required by law when such service is purchased from an individual by the social services district; camp fees when funds cannot be obtained from other sources for children receiving aid to dependent children assistance not in excess of the total cost of ninety-six dollars per child for one-half of one percent of the total number of children receiving aid to dependent children assistance in the social services district; life insurance premiums provided the policy is assigned to the Department of Social Services, or in cases where the recipient is aged, his life expectancy is short, or he is deemed uninsurable.

§ 4. Subdivision three of section one hundred thirty-one of such law, as added by chapter five hundred seventeen of the laws of nineteen hundred seventy, is hereby amended to read as follows:

3. For needy persons who are members of a family household, the standard of need for determining their eligibility for public assistance shall be as prescribed by section one hundred thirty-one-a of this chapter and applicable federal requirements. For needy persons who are not members of a family household, the [The] department shall *continue to* determine [and establish] the [standards] *standard* of need for determining *their* eligibilty [of persons] for

public assistance pursuant to the provisions of this chapter and applicable federal requirements.

§ 5. Subdivision four of section one hundred thirty-one of such law, as last amended by chapter one hundred two of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

A person shall be deemed to have refused to accept such employment if he:

a. fails to obtain and file with the social services district at least [once in every two-week period] *semi-monthly* a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. [wilfully] *willfully* fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. [wilfully] *willfully* fails to report to such office the result of a referral to employment, or

d. [wilfully] *willfully* fails to report for employment. Such [wilful] *willful* failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not

Exhibit 2A.

rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person *and the appropriate social services department* to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department.

§ 6. This act shall take effect immediately, except that section one shall take effect on the fifteenth day of May, nineteen hundred seventy-one, and section five shall take effect on the first day of July, nineteen hundred seventy-one.

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

State of New York }
Department of State } *ss:*

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

JOHN P. LOMENZO,
Secretary of State.

---

[4] **Excerpts from Deposition of Herbert Simon and Nelson Hopper.**

HERBERT SIMON and NELSON HOPPER, called as witnesses, having been first duly sworn, were examined and testified as follows:

Mr. Yeager: Would the two of you please state your names?

Mr. Simon: Herbert Simon.

Mr. Hopper: Nelson Hopper.

Mr. Yeager: And would you state your present occupation?

Mr. Simon: Director of Employment Security, Administrative Analysis, in the Division of Employment, New York State Labor Department.

Mr. Hopper: I am the Director of the Employment Service Bureau of the New York State Department of Labor, Division of Employment.

* * *

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

[52] Mr. Yeager: We have mentioned the Work Incentive Program earlier. Is there a specific interview that is given to a person who has been referred to you for the Work Incentive Program comparable to the Employment Service interview that is given to other clients in the department?

Mr. Hopper: May I rephrase it to see whether we are saying the same thing? Are you asking whether a WIN enrollee receives the same interview that a 131.(4) might receive?

Mr. Yeager: Well, does he receive [53] the same interview?

Mr. Hopper: Yes.

Mr. Yeager: Does he receive an interview which goes beyond in any way the interview which is given to a person referred under Section 131.(4)?

Mr. Hopper: Generally yes.

Mr. Yeager: I believe there is a requirement that an employability plan be prepared for a person who is referred to the Work Incentive Program. Is there a specific interview in which the employability plan is developed by the WIN work?

Mr. Hopper: One or more, and at this point this is not done by the interviewer but this would be worked out by a higher-level professional counsellor.

Mr. Yeager: Is this employability plan worked out for the person referred to the State Employment Service pursuant to Section 131.(4)?

Mr. Hopper: No.

* * *

[62] Mr. Yeager: Returning again for a moment to a situation in which the box entitled "Applicant

Refused Job" had been checked, could this box be checked in a situation in which the applicant refused the job on the basis [63] that he was not qualified by prior experience to do that type of work?

Mr. Hopper: No.

Mr. Yeager: Would that be impossible?

Mr. Hopper: The employer may say he does not have sufficient experience or this type of a remark but, on the other hand, this—I would like to strike the earlier comment. I'm not sure. I want to take a different approach to the question. The employer reserves the right to determine whom he shall hire in all of these cases.

Mr. Yeager: Excuse me. I was referring to a situation in which the applicant indicated that he did not want the job because he was not prepared by his prior training and experience for that type of work. Would this box be checked in a situation like that?

Mr. Hopper: Yes, it could be.

Mr. Yeager: Is there a requirement that the State Employment Service employee refer clients referred to [64] you pursuant to Section 131.(4) only to those jobs for which they are qualified by their past experience and training?

Mr. Hopper: If I understand your question, the answer is no.

Mr. Yeager: Could a person be referred to a job which required less training and less experience than the training and experience which he had, had he been referred pursuant to Section 131.(4)?

Mr. Hopper: Yes.

Mr. Yeager: As to the general clientele of the

State Employment Service, is there a requirement that those persons be referred only to jobs for which they are qualified by training and experience?

Mr. Hopper: Yes, there is such a national and Federal requirement.

Mr. Yeager: Does the New York State Employment Service follow the national Federal requirement?

Mr. Hopper: Yes, we do. In [65] fact, I would like to say a Section 131.(4) client in relation to those available job openings would be given the benefit of his highest training and experience as factors.

Mr. Yeager: But for a non-Section 131.(4) client of the State Employment Service, would that person be referred only to jobs which approximate his level of skill?

Mr. Hopper: Suitable in relation to his experience, that's right.

Mr. Yeager: Does your department administer Unemployment Insurance as well as the State Employment Service?

Mr. Hopper: Our department does administer the Unemployment Insurance Law.

Mr. Yeager: Under the Unemployment Insurance Law, are the unemployment recipient's benefits terminated upon refusal to accept a job which did not require the level of skill and training which he had?

Mr. Hopper: You said Unemployment [66] Insurance claimant.

Mr. Yeager: Excuse me, Unemployment Insurance recipient.

Mr. Hopper: I don't care about "recipient" or

"claimant". I just want to be sure you mean what you say, that an Unemployment Insurance claimant would be referred to an opening on the basis of his experience—right.

Mr. Yeager: Except that what I am saying is would his benefits be terminated as a result of his refusal to accept a job for which he was more than qualified?

Mr. Hopper: That for which he was qualified, yes.

Mr. Yeager: We're not understanding one another. Could Unemployment Insurance benefits be terminated in the situation as a result of a recipient's refusal to accept a job which did not require as high a level of training and experience as he had? I'm talking about a substantial difference of some sort.

[67] Mr. Hopper: I must be sure, I'm not sure we are saying the same things. Are you restricting your question to an Unemployment Insurance claimant? You're talking about Unemployment Insurance the last time you said "recipient"? You don't mean a welfare recipient?

Mr. Yeager: I mean Unemployment Insurance.

Mr. Hopper: An Unemployment Insurance claimant or recipient would be referred to a job within the range of his experience and training. If he is a machine operator, he would be referred to a machine operator's job.

Mr. Yeager: Does the State Employment Service make a provision for those persons referred to the service pursuant to Section 131.(4) to obtain transportation when they're located at great distances from the State Employment Service office at which they must pick up their checks?

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

Mr. Hopper: We would refer such [68] persons within any reasonable area of employment that is normal for the residents of the area.

Mr. Yeager: I'm sorry. What I am talking about is distance from the State Employment Service office to which he must go to pick up the check, that is the distance from his home to the State Employment Service office. Are there provisions for transportation allowances provided by the State Employment Service?

Mr. Hopper: No.

Mr. Yeager: Are there provisions for going out and picking up a person who lives at a great distance from the State Employment Service office and bring him in?

Mr. Hopper: No.

Mr. Yeager: Is there any provision made by the State Employment Service to meet the transportation needs of persons referred pursuant to Section 131.(4) who live at a distance from the State Employment Service office at [69] which they must pick up their checks?

Mr. Hopper: No.

Mr. Yeager: Is there any provision for Unemployment Insurance recipients serviced by the State Employment Service who live at a great distance from the State Employment Service to receive their checks by mail?

Mr. Hopper: All our recipients would receive their checks by mail.

Mr. Yaeager: Is there any provision for Unemployment Insurance recipients to report their con-

tinued availability for employment to the State Employment Service by mail?

Mr. Hopper: In some hardship cases.

Mr. Yeager: Has any effort been made to apply this system to persons referred to the State Employment Service pursuant to Section 131.(4)?

Mr. Hopper: Not at this time.

Mr. Yeager: Are there plans to examine that possibility at this time?

Mr. Hopper: No, because of the statute.

[70] Mr. Yeager: A person who is referred to the Work Incentive Program—would such a person be required to accept work which did not require the skills and training that that person had acquired?

Mr. Hopper: There would be some variables to that. Assuming a person completed his training plan and followed through on his job development plan, there would be efforts made to develop a job for him in relation to his training. This is one of the differences of the Work Incentive Program.

Mr. Yeager: Would there be any situation in which a person participating in the Work Incentive Program could be found to have refused to participate within the meaning of the Work Incentive Program guidelines and statutes as a result of his or her refusal to accept a job which did not require the level of skill or training for which that person may be proposed [71] for training in the Work Incentive Program.

Mr. Hopper: I don't think the question is basically applicable to the WIN Program. A person who would refuse a job in the WIN Program, the completion of

training, when he has had an occupational objective, his reasons for termination from that program would not have occurred at the job placement time but at an earlier date in this process. You see, they are in this program maybe for three months or six months or a year or longer.

Mr. Yeager: Let us take the person who has completed his training. For example, a person who is a refrigerator mechanic. Would this person be required to, under the penalty of being found to have refused to participate in the WIN Program, to accept a job which required skills less than the skills of a refrigerator mechanic?

[72] Mr. Hopper: I have trouble reconciling the question to the objectives of the program. Are you saying he did refuse a refrigerator mechanic opening?

Mr. Yeager: No, I'm saying he refused a job opening which, under the rules you would apply to Unemployment Insurance recipients, for instance, would be a job opening that did not meet the level of skill and experience of a job of which he would be capable of performing.

Mr. Hopper: Well, basically we expand tremendous effort to obtain employment for him in the occupation for which his training was accomplished or in related occupations.

Mr. Yeager: How many openings are there for Work Incentive Program participants in the State of New York at present?

Mr. Hopper: How many? Let's just define this.

Mr. Yeager: Well, I understand [73] there are slots called WIN slots. How many WIN slots are there in the State of New York at the present time?

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

Mr. Hopper: There are 14,800. It has been increased to 16,000.

Mr. Yeager: Effective what date would that increase be?

Mr. Hopper: I'm not sure—April or May sometime.

Mr. Yeager: Are those WIN slots being fully utilized at the present time?

Mr. Hopper: They are all being fully utilized except the last 2,000 which require additional staff, staff training facilities, et cetera, before they can be accommodated, and additionally contracts have to be developed as the need arises for the training of these individual.

Mr. Yeager: Are there specific types of training that are now provided in the Work Incentive Program in the State of New York?

Mr. Hopper: It's open ended. You [74] are talking about skill training?

Mr. Yeager: Yes.

Mr. Hopper: Let me go back. It could be basic education. It could be studies of a second language. It could be studies in terms of prevocational training. It could be work-try-out type of a situation. It could be OJT, or it could be institutional training.

Mr. Yeager: What is OJT?

Mr. Hopper: On-the-job training.

Mr. Yeager: I'm sorry, I interrupted you.

Mr. Hopper: Within these categories there could be a substantial range of different occupations.

Mr. Yeager: Are there specific skill training openings in WIN? Are there training programs

designed to prepare a person for a specific occupation in WIN?

Mr. Hopper: Occupations and occupations.

Mr. Yeager: How many different [75] occupations are available through WIN?

Mr. Hopper: I don't know offhand.

Mr. Yeager: Could you estimate the number? I'm speaking of formal training positions.

Mr. Hopper: You are talking about skilled training slots?

Mr. Yeager: Yes.

Mr. Hopper: Offhand I don't know.

Mr. Yeager: Are there many people in the WIN Program at the present time who are on holding status in New York?

Mr. Hopper: Yes.

Mr. Yeager: How many are on holding status?

Mr. Hopper: Again I don't know.

Mr. Yeager: Is that information provided in the answers to interrogatories?

Mr. Hopper: No.

Mr. Yeager: This gray book to which you are referring—is that a public document of the Department of State Employment Service? Is that [76] a public publication?

Mr. Hopper: Yes.

Mr. Yeager: Could a copy of this be made available to the plaintiffs, Mrs. Coon?

Mrs. Coon: Yes.

Mr. Yeager: I seem to see frequent reference to it. The answers don't seem to be coming out of but at least we'll know.

Mr. Hopper: As of May 1971 there were 4,000 on holding status, 4,840 on holding status.

Mr. Yeager: Are you aware of any referrals to the State Employment Service of persons participating in the WIN Program? Are you aware of any referrals pursuant to Section 131,(4) to the State Employment Service of persons participating in the WIN Program?

Mr. Hopper: No.

Mr. Yeager: Are there any such referrals?

Mr. Hopper: They would be referred, as I indicated some time ago, as WIN referrals.

* * *

Excerpts from Deposition of Philip Pinsky.

[1] Examination of MR. PINSKY by Mr. Freed:

Q. Would you state your full name, please? A. Philip C. Pinsky.

Q. Could you tell us what position you hold with the Department of Social Services? A. I'm an Assistant Welfare Attorney employed by the Onondaga County Department of Social Services.

* * *

[32] Q. Now starting with the first exhibit, Exhibit E, the notification of considering the person an unemployed employable person, may I ask you Mr. Pinsky, whether the letter informs the recipient why he is being considered an unemployed employable person? A. No, except for the reason that there is a change, or there was a change in the Social Service Law.

* *

Q. Well is there anything in that letter which indicates to the recipient that he has a right to contest the finding of employability? [33] A. No.

Q. Does he, in fact, have the right to contest the finding of employability? A. If you mean a Fair Hearing, such requests have been raised; so I would have to say yes.

Q. Upon receipt of such a letter, could a recipient immediately demand a Fair Hearing as to this classification of his being employable? A. That is my understanding.

Q. If such a Fair Hearing was demanded, would the recipient be required to report to the Employment Service and accept referral to jobs? A. You mean pending the holding of the Fair Hearing, and pending the determination by the State Commissioner?

Q. Yes.? A. If the recipient requests a Fair Hearing and he does not give us any information indicating why he considered himself to be unemployable, then the answer would be yes. We would require him to comply with the terms of the letter, pending a Fair Hearing.

Q. Now have you conducted Fair Hearings—I believe you said you have? A. Many of them.

Q. In relation to something like this? A. Not many relating to this; no.

[34] Q. In general, have you conducted a Fair Hearing relating solely to the determination of employability, and not in addition to an issue as to non-compliance with the requirements of the Law? A. Yes—as a matter of fact, my recollection is that we have had a couple of cases in which there had been no discontinuance or reduction or closing of a case, but in which the employability issue had been raised. There might have been coupled with some other budget question, but not having to do with the employment field—but if you're asking about our own cases which we

have taken into consideration: whether or not we have cut these people off, I have a recollection that when a case was scheduled for a Fair Hearing, that before it actually went through—that is, before the Hearing was commenced—now, let me back up there, I just can't recall right now because we have had many, many Fair Hearings, but the answer to your earlier question whether we would require them to report to the State Employment Service under the letter, and your question was in regards to employability—if your question were would we cut off assistance to that person if he did not comply with the letter, pending the Fair Hearing, I think your question would imply that.

[38] Q. Is there any work Incentive Programs for Onondaga County? A. Absolutely.

Q. Now how many jobs are there in this program? [39] A. We have 400 slots assigned to us.

Q. Now you referred to slots? A. Slots—we have 400 slots assigned.

Q. Have you finished answering the question? A. We have 400 slots assigned. We have approximately 300 people in the WIN program at the present time in this county.

Q. You just said that there were 400 slots. Are you now stating that there are 400 slots and 300 people? A. That's what I said—400 slots and 300 people. We have room in there for more.

Q. Now have any recipients of ADC or ADCU been declared employable and referred to the New York State Employment Service, pursuant to the amendment to Section 131.4? A. I would imagine that there are some recipients of ADC, or ADCU, who have been declared employable. I wouldn't tell you that there are none.

Q. When a recipient of ADC or ADCU is declared em-

ployable, and referred to the New York State Employment Service, where does he go—where does he or she report? A. To the State Employment Service, to the address I gave you; 667 South Salina Street. This is the same building—within the same building where we are now. [40] Do you mean specifically where would they report?

Q. Yes? A. There is a separate office for the WIN office area in the building, and there is a place where the WIN participants go and they receive their Manpower training—I think it's at the terminal here—and then their checks would be issued. I am sure—now, I could be wrong—but the checks would come out of a different window, but it would all be in the same building.

Q. Well I'm not referring specifically to WIN participants. I'm asking about people who are recipients of ADC and ADCU, referred pursuant to Section 131.4—where would they go? A. They would go to the same place that the home relief recipients go.

Q. Now when a recipient of ADC or ADCU is referred to the State Employment Service, does he report to this same building? A. He does; yes.

Q. Now when a recipient of ADC or ADCU is referred to the Employment Service, is he provided with an employability plan when referred under Section 131.4? Are you familiar with the term employability plan? A. I can't answer that question by that terminology. [41] I use a lot of words that may or may not conflict with your terminology, but the program; if I had a different terminology, I could give you a better answer if you explained it a little more.

Q. Well, I don't know the section number but it is 380 point something, I believe, in reference to the WIN program. It provides that each participant in the WIN program shall have an employability plan prepared by WIN staff. Now, I'm

asking you whether an ADC or an ADCU recipient referred under Section 131.4 has an employability plan prepared for him? A. I can't honestly answer that because if that were done, it would be done by the Department of Labor and not by our agency; so I can't speak for what they would do.

Q. If such a recipient were referred to a job pursuant to Section 131.4 and refused such a referral to a job, would he be entitled to a Fair Hearing? A. If the facts entitled him to a Fair Hearing—I might add that any person who has a grievance with the Department of Labor is entitled to a hearing before a referee furnished by the Department of Labor, and I have been involved in those hearings, and if he is dissatisfied with that, then he is entitled to a second hearing before the Department of Social Services. Now in relation specifically, he can be entitled—and there is a second [42] hearing if he requests it, even though he loses the first hearing.

Q. Now are we talking about WIN, or are we talking about any person under HR or ADC who was referred under Section 131.4 and refused a referral from the State Employment Service? A. I'm referring to those from the WIN program.

Q. I'm referring to HR or ADC recipients who have been referred to the State Employment Services pursuant to Section 131.4, and there received a referral to a job and refused that job; would that person be entitled to a hearing because of that? A. Oh, absolutely.

Q. Who conducts that hearing? A. The Department of Social Services.

Q. Would there be a Labor Department hearing in that case? A. If there would be; I'm not aware of it.

Q. If such a person either in ADC or in HR is referred to the New York State Employment Services pursuant to Sec-

tion 131.4 and were found to have refused a job referral without good cause, would such a person be subjected to immediate termination of public assistance? A. I'm not sure I understand your question, but is [43] your question directed to what the procedure would be—that is, the procedure we follow with respect to the hearing of a person who is alleged to have refused a job without good cause?

Q. I'm saying if such a person has had a determination, or it has been determined in a Fair Hearing to have refused such a job without good cause, would that person be subject to immediate termination of beneifts? A. Again—and I'll not refer to WIN participants.

Q. Fine. A. Except for that, a person who as a result of a Fair Hearing is found to have her own case stop? Now as far as HR is concerned, the case would be closed for a period of time. If the person were head of the household, he would be deleted from case assistance but assistance would continue for the rest of the family.

Q. Well you just clarified your answer that this would be the case for either an ADC or home relief recipient referred pursuant to Section 131.4. A. Yes, there is a distinction between the two categories; ADC and HR. Under one scope of the section, in one case as I pointed out to you, the head of the household would lose the assistance but assistance would continue to the rest of the family.

[44] Q. In such a case would the recipient be entitled to a period of counseling prior to the effective day of any termination? A. Again, we're talking about a non-WIN case.

Q. Yes. A. In our county, the counseling comes in before the 7-day notice period. If that counseling has not been effective, there is no counseling done after the State renders a Fair Hearing decision.

* * *

[77] Excerpts from Deposition of George Demmon.

GEORGE DEMMON, 18 Glenside Court, Town of Tonawanda, New York, after being duly called and sworn, testified as follows:

Examination by Mr. O'Connor:

Q. Mr. Demmon, would you tell us, please, where you are presently employed and what is your position there? A. I'm employed by the Erie County Department of Social Services. My official title is Senior Employment Counsellor. My acting title is Acting Manpower Coordinator.

Q. How long have you been in these positions? A. I've been Senior Employment Counsellor for three years, and Acting Manpower Coordinator for three years.

* * *

[87] Q. What is your understanding of the nature of adequate child care and the requirement of diligent efforts? A. Well, first of all this is really not new with this—this stems back to 1968 when we established with the federal government and state government the work incentive program, and this is really taken out of Bulletin 93 which is established—has established the work incentive program. The basis of referring an ADC mother to the work incentive program—and, incidentally, if child care arrangements were available, this would be a mandatory work incentive program work referral. The basis for such referrals are discussions between the caseworker, the under care worker and the mother, first of all, as to the availability of child care, and the—let's say, the advantage of having the mother go into training and/or employment versus her staying home and taking care of the children, in other words, all these problems are considered, and the real criteria is whether the ADC mother, by going into training and work would strengthen the family situation or whether it would not. If it

would [88] weaken the family situation, then this would be an inappropriate referral. If such a referral—if child care plans were available, grandmother was there, who is adequate, day care center is there which is adequate, so on and so forth, if all this is available and this would strengthen the total family situation then the referral is an appropriate one, and this is not changed, as you recall, of this—

Q. It's your understanding that this definition or this exception to the definition is identical to the requirements of the work incentive program? A. Right.

Q. Which—I had a copy of those—

Mr. O'Connor: Is that policy reduced to writing, any memorandum issued by the Erie County Department of Social Services?

The Witness: What policy?

Mr. O'Connor: As to the appropriateness of day care?

The Witness: That, oh, Bulletin 93 in your interrogatories. Is that how you call it? We're attaching a Bulletin 93 to this, because it contains the full bulletin and contains—at least half of it is on guide lines for [89] referral, child care and so on and so forth.

Mr. Freed: Is there any reference made in any bulletin, Administrative Letter or other documents implementing the new New York State Work Requirements which makes reference to Bulletin 93?

The Witness: Except in our discussions with the case staff, we made this very clear, that what they were talking about here is exactly what they were talking about in Bulletin 93.

Mr. O'Connor: Seems, then, this is an agency policy rather than the policies formerly mandated by the Department of Social Services.

The Witness: No, I think this merely interprets what the federal government and the State Department of Social Services have come up with the work incentive program. This is merely a repeat, if you will.

By Mr. Freed:

Q. Okay. We're going to get the regulations, the federal regulations. I think we can—usually compare them, but I have a question. You said that a person who [90] could obtain child care under Bulletin 93, which you say is now comparable to this definition, would be appropriate for referral to the work incentive program if—in the definition of employable as set forth in the Bulletin 26 and this Administrative Letter includes every recipient of ADC who's appropriate for referral to the work incentive program—strike that. Strike that whole question. Does the definition of employable with regard to child care as set forth in Bulletin 26 and Administrative Letter 43, encompass every recipient of ADC who's appropriate for referral to the work incentive program? A. Yes. Our system is such that if an ADC mother is deemed appropriate because of child care and so on and so forth any other guide lines I've indicated, this is a mandatory referral to the work incentive program under the work reform rules. She is in compliance with these rules by this mandatory referral.

Q. Are you saying that every recipient of ADC who is appropriate for the work incentive program is referred to the work incentive program? A. Definitely.

Q. So that no recipient of ADC who has an adequate plan [91] of child care in Erie County would be referred to the State Employment Service under Bulletin 26 and Administrative Letter 43? A. No, I didn't say that. They would be referred to the State Employment Service. WIN office

and 950 Broadway even though they may not have been enrolled at this point. Let me give you a concrete example. An ADC mother is deemed appropriate. She now has an adequate child care plan, has been agreed upon by the under care worker, by the mother and no doubt approved by Child Welfare, we involve them, there are certain steps necessary to get her enrolled in the work incentive program. However, we then refer her to the SES WIN office, where she would pick up her semi-monthly check and be considered for employment opportunities even though she has not been enrolled in the WIN Program, because the enrollment procedure might take as much as a month.

Q. Would a person enrolled in the WIN Program but in a holding status because there is not a WIN training slot available be subject to referral for an employment opportunity? A. Absolutely.

[92] Q. Absolutely? A. The name of the game in WIN is employment, It may be—may require training in advance, but if there are employment opportunities, that's the main objective.

Q. I think maybe I can—I think maybe we've—I've not made my question clear. While the person is in a holding status, could he be referred to a job by the State Employment Service pursuant to— A. Absolutely.

Q. —these rules? A. While he's in a holding status and before—in holding status before he gets enrolled.

Q. A person who is in HR and receives a letter informing him he's an employable recipient and therefore must report to the—to the employment service and pick up the check and et cetera, does such a person have a right to contest that finding of employability at a hearing prior to reporting? A. Certainly.

Q. He does? A. Yes.

Excerpts from Deposition of George Demmon.

Q. What would be—how would that right be indicated? What would be the procedure? What would he do? [93] A. All he has to do is come in and contest the thing, and he is given a right to talk to his caseworkers, supervisors, and ask for a fair hearing.

Q. Prior to the—his having to report to pick up his check? A. The time—well, limits are such that you might have to pick up the first check and given every right to contest his definition of employability or any other actions taken by the caseworker.

Mr. O'Connor: Is there any procedure of informing recipients declared employable that they have a right to contest their new status?

The Witness: Oh, well, now I understand the question a little bit more. You're saying that if a caseworker declares a client employable, do we say, now, you can contest this sort of thing, no, if the client feels he's not employable and does contest it, then he's notified of his rights, but we don't issue any letters or statements or anything and say, now you're employable, and if you don't like this, do this, that or the other thing.

By Mr. Freed:

[94] Q. Is the right to that hearing on the issue of employability contained in any document put forth either by your department or the State Department? A. Yes.

Q. What document would that be? A. We have—first of all, State Department of Social Services as a Fair Hearing Procedures Bulletin which also we have included in your interrogatories.

Q. Interrogatories? A. We included that for your information. What we do now is—What we have done now is

this. If a client who has been declared employable goes to the State Employment Service, and he says to the interviewer or counselor, I have a bad back, I cannot work, this is reported on the ES-28 form which is the communication from the State Department of State Employment Services to us. Upon the receipt of this information, our medical division reports are examined resuming we find no medical reports on this client, we then issue him a seven day notice. This notice says to the client, you have said you were unemployable because of this, that or the other thing, you have seven days to bring to us, medical verification of this fact, you may also [95] have a hearing with a supervisor, and you also have the opportunity to ask for a fair hearing with the State Department of Social Services by writing to so-and-so, and so on and so forth.

RE-EXAMINATION by Mr. O'Connor:

Q. What happens at the end of the seven day time span if no medical verification is forthcoming? A. On the strictest interpretation of the regulation, and this is said in the letter, then his aid is stopped, if it's a single, or if it's a family member, the grant is reduced.

Q. You said strictest? A. Right.

Q. Is there room for discretion? A. Oh, yes, the guy says, well, I do have this verification, but it's coming from E. J. Meyer and can't get it out for another week, so, you know—

Q. Is there any written requirement that aid be continued if there's difficulty in obtaining medical verification? A. No.

Q. It could be in the discretion of the caseworker to [96] hold the client to the seven day limits? A. Right.

RE-EXAMINATION by Mr. Freed:

Q. You said the person would have the right to a fair

hearing, hearing on the issue of his or her employability? A. Yes.

Q. During the period in which that fair hearing process is progressing before the fair hearing, you said that—that it might be a possibility that the recipient would have to go down and pick up his check. Would he also have to accept an employment referral? A. Yes.

Q. Would he be subject to termination if that—if he refused to co-operate or accept that referral? A. If it eventually—it were considered without good cause, if it were eventually considered with good cause, no.

Q. I have in front of me, eighteen New York Code of Rules and Regulations, Section 388 point 7, entitled, "Right to a Hearing", and this section is in part [97] 388 entitled, "The Work Incentive Program", and I read from Section 388 point 7, "Right to a Hearing", parenthesis A. A. Excuse me, now. We're talking about work incentive—

Q. Right. A. Not work rules?

Q. "A Social Services official shall inform an ADC recipient in writing and orally whenever practicable of their right to a fair hearing by the department, and the method by which a fair hearing may be obtained when" —and then Sub-Section 2, "The person is agrieved because he has been determined appropriate for the referral to the work incentive program, and disagrees with such determination"—and the provision continues in parts which are not relevant to my question. You can refer to it, and the question I ask is whether the notification given to a recipient who has been declared appropriate under the work incentive program is the same as the notification to a recipient who is declared employable under the work— A. Essentially, yes. What you're reading there is if the client himself complains about the referral to the [98] work incentive program, and it

would be the same as a referral under work rules, under work reform.

Q. Now, pending the hearing for a recipient under the work incentive program— A. Nothing happens to the client.

Q. He does not have to accept referral? A. No.

Q. So, am I correct in assuming that this is the difference between the requirements of the work incentive program and the requirements of the work rules? A. Right.

Q. Now, my understanding of what you've said is that every person in ADC—well, now, let me—let me rephrase that. Drop—strike that. Could a person be declared employable pursuant to the New York Work Rules and be inappropriate for referral to the work incentive program, a recipient of ADC? A. An ADC mother.

Q. ADC person, ADC-U, or ADC under any exceptions? A. Under ADC-U, I'll take in parts. Under ADC-U, by the very definition, is a mandatory WIN referral, period.

Q. All right. A. And ADC mother, and this is strictly ADC, now, ADC [99] mother, is a mandatory WIN referral if she has appropriate child care and so on and so forth. Now, I don't think I answered your question. What was it again?

Q. Now, could a person be referred under the New York State Work Rule scheme and he be inappropriate for the referral to the incentive program? A. Absolutely not, no possible way.

Q. You have—and, you say that every—

Mr. Gambacorta: Excuse me, are you referring to ADC-U now?

By Mr. Freed:

Q. Both. A. The answer is the same for both.

Q. Now, well, are you aware—well, strike that, because

you wouldn't be aware. And, you are also telling me that no recipient of ADC or ADC-U in Erie County or anywhere else in the state should be referred pursuant to the New York Work Rules— A. No, I'm not saying that. First place, there are only ten projects in New York, WIN Projects in New York State. ~~God~~ That GJD eliminates every other county except ten.

Q. Okay. [100] A. I'm saying that any ADC or any ADC-U that is referred under work rules should be an automatic WIN referral. If it is not, it was a mistake on the part of the under care worker as to what office they referred the client to, not the referral.

Q. Now, but the—okay. Now, let's get to this office. Every referral of an ADC recipient under the work rules is to a WIN office, should be to a WIN office? A. Should be, yes.

Q. Is the procedure from then on a procedure pursuant to the provisions of the New York Work Rules, or a procedure pursuant to the provisions of a work incentive program? A. Both.

Q. Both? A. Both.

Q. Could you amplify that answer? A. Yes. I think I did before, but I will again. It's that you have—may have a mother who's deemed appropriate today for the work incentative program and therefore, the work rules together, okay. You want to get her—you make the referral. Okay. Now, she's going to pick up her next check at the WIN office. [101] Before she was enrolled in a program, she's required to have a physical which takes time for scheduling. She's required—or, I mean, a number of—an interview, number of papers have to be filled out and so on, indicating her interests, her background, her education, this, that and the other. In other words, information necessary for the

work incentive program. Once these papers are prepared, then they go to the work incentive office. Depending on their scheduling and so on and so forth—I indicated it could be as much as a month, perhaps five weeks before she was actually enrolled. She could be picking up two checks and referred to any service for employment before she's enrolled.

Q. She was referred to employment pursuant to the New York Work Rules prior to enrollment in the incentive program, could permanent employment— A. Sure.

Q. Then she would not be eligible for the training—for any training that she might undergo in the incentive program? A. No, the work incentive program, as I say, the name of the game is employment. People are referred to the [102] program who are job ready, no training needs to be involved, for—let me give you an example. You have a licensed practical nurse. She had to quit her job because she was pregnant. Okay. Child is now two years old, Gramma is going to stay with her son, and she's ready to go back into the labor market, she's referred to the WIN Program, no training is necessary, merely a question of getting her employment. so, first of all, employment is considered, is the client job ready. Okay. The client is not job ready. What does she need or he need? May need basic education, Puerto Rican father can't read or write, might start from the bottom all the way up, may need skill training, may be a situation where the client can go on OJT Program, On The Job Training. There's a myriad of possibilities, but the name of the game, again, is employment.

Q. If a person is referred for employment under—from the WIN office prior to enrollment in the work incentive program, or after enrollment, but on a holding status in the work incentive—let's take the first part, because I take it a

hold is a person who is not job ready? [103] A. Could be, or could be just the job hasn't been developed. In our economy today, it takes time.

Q. Did the WIN—the figure of fifteen thousand WIN slots for the—New York, does that mean training slots? A. Slots, period.

Q. That means everything? A. Right.

Q. So I take it there is always a significance—or, significant number of people on hold in the work incentive program, or is that not true? A. Depends on what you call significant. I think our—our total as of September 1st, was somewhere near thirteen hundred active cases and about three hundred and fifty on hold.

Q. Hold, okay. A. Whether that's significant, I don't know.

Q. If a person—let's take the first part and say a person who's job ready under the terms that you have just related, if the employment service referred that person to a job, and would that person refused to accept that job, the person be entitled the requisite GJD to a hearing on that issue, ~~the~~ good cause refusal, ~~the good cause~~ [104] recipient's refusal to accept the job? A. Certainly.

Q. Who would conduct that hearing? A. Well, first of all, the State Employment Service is involved at this point in the—in the WIN Program period?

Q. That's what I'm asking. A. Right.

Q. If a person, an ADC person is sent to the WIN office pursuant to the New York Work Rules and not enrolled in the— A. Not enrolled, the hearing would be conducted by DSS.

Q. So that a person appropriate for WIN by your definition would be given a hearing not by the State Employment Service as would be the case if he were enrolled in WIN? A. Correct.

Q. But, rather by the Department of Social Services? A. Correct.

Mr. Freed: Okay. I think that line is over.

* * *

[129] Q. If we could refer back to your previous discussion of the relationship between work incentive program and the new employability regulations, I believe you said that if a recipient was in either ADC or ADC-U, that recipient would be appropriate for referral to WIN and his or her referral under the procedure set forth in the Administrative Letter 43 and Bulletin 26 and the statutes would be to a WIN office and that that person would eventually be enrolled in work incentive programs, is that correct? A. Correct, should be.

Q. If a person in ADC is sent to the work incentive office of the State Employment Service and prior to his enrollment in the work incentive program is [130] referred to employment, to private employment and refuses without good cause as determined by the appropriate agency to accept that employment, what happens? A. He is given a seven day notice in which he was allowed to or is allowed to establish cause one way or another or good cause and notified that without good cause, his grant will be terminated, if a single person or a reduction in grant if it's a family person.

Q. Would have to be a family person if it's an ADC or ADC-U? A. Right, reduction in grant and also notified of his rights of a fair hearing.

Excerpts from Deposition of George Demmon.

Q. Now, I'm assuming that fair hearing proceeded and the fair hearing came out with a determination that there was no good cause then what would happen? A. Well, the situation would be unchanged. In other words, the—if the undercare worker establishes that there was no good cause, the grant would be reduced by the amount, then, if the fair hearing further established that—okay. If it contradicted that, of course, he would be put back in the grant retroactive.

Q. I see. If the person is in ADC is referred to the work [131] incentive office, is enrolled in the work incentive program but no slot is available and the person is on hold in the work incentive program, if the person is—if the person is further referred to a job, refuses without good cause to accept that job, what would happen? A. Then under Bulletin 93, which is the guide lines for the work incentive program, and I'm now—I'm guessing on the times, but I think they're permitted sixty days—sixty day period for counseling with this individual, the idea being to find out in terms of why he refused the job, explain to him what's going to happen if he does refuse the job, getting back into compliance, if possible. I think it's a sixty day period.

Q. All right. I take it from your answers to those two questions that the first hypothetical prior to enrollment in the incentive program but appropriate for referral that that individual would not be entitled to the sixty day period? A. That's right.

Q. And, would be terminated immediately? A. Correct, and I think that I might explain this further [132] by saying that the work incentive program is essentially a federal mandated program in which the rules are essentially set down by the federal government. The work reform program which we're talking about here is essentially not—essentially is a

State program in which the federal government is not involved.

Q. I have here a provision of what I understand is Bulletin 26, although it's not—it's in the form of an amendment to Part 385 of the NYCRR.

* * *

---

[4] **Excerpts from Deposition of Edward Phillips.**

EDWARD PHILLIPS, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Yeager:

Q. Would you state your full name please? A. I am Edward Phillips, Assistant Commissioner, Division of Family Services, New York State Department of Social Services.

* * *

[61] Q. Returning for a moment to the question of a mother in the ADC program, what kind of information in her case file would indicate whether or not she was employable? Now I am referring specifically to a mother in this situation. A. I think we endeavor to the best of our ability to specify some of the kinds of general [62] information that would be utilized in assessing whether a mother was to be considered employable. I think that's stated in the department regulations, Part 385, what goes in in making a determination, whether such persons are essential for the care of children or other incapacitated members of the family, consideration being given to the number of children at home, their ages, instances of illness, handicap or special needs, any availability of adequate alternate places of care; but I'd like to make it quite clear that if a mother's presence in a

household is not essential, the only deterrent to her employment would be that she would be considered unemployable for other reasons, such as illness or participating in a training program.

Q. Absence of child care alone would not deem her unemployable? A. No, it would be a deterrent to her reporting and engaging in the employment or training.

Q. Well, what if there was absence of child care and absence of diligent efforts to find child care? Would a person still be found to be employable? [63] A. A person would be employable but not referrable at that point until there was adequate child care developed.

Q. What do you mean by "referrable" in that context? A. "Referrable" means to be referred to the State Employment Service Office.

Q. If a person were not making diligent efforts to find child care, that person would not be referrable to the New York Employment Service? A. Obviously the department would have to take appropriate action because of her failure to have complied with the requirements of the law, that she should have been making a diligent effort to find appropriate day care.

Q. What action would a local Social Services office take that would be appropriate if she was not making a diligent effort? A. Conceivably it would be termination of her assistance.

Q. But there would not be a referral? A. No. I think one of the fundamental requirements that is specified is that there be an adequate plan of child care.

Q. Is not an employable person required to pick up his or her assistance check at the State [64] Employment Service? A. Yes.

Q. Referring to Plaintiffs' Exhibit A for identification,

which is Section 131 of the New York Social Service Law—do you have a copy of that in front of you? A. I do now.

Q. Does Section 131 of the New York Social Services Law define as employable those mothers that do not make diligent efforts for child care, to locate child care? A. Yes, but I think when you read this law this is a subordinate clause. It says, ". . . notwithstanding diligent efforts by such person to obtain others to provide such care". You have to regard it as a subordinate clause to the main category.

Q. In other words, are you telling me that you do not think that the statute defines as employable those mothers who are not making diligent efforts to secure child care? A. No, I'm not saying that at all. All I'm saying is that the question of employability would become secondary. The person is failing to comply with the requirements of the law, not [65] making diligent effort. She would be subject to sanctions and penalities imposed by law.

Q. Would you say she is employable if she has not made diligent effort to search for child care? A. I would say her failure to cooperate and fulfill the requirements of the law would act as a bar to her reporting to employment or training. I think that's how we tried to write the regulations.

Q. Would you inform a person who is not making diligent efforts for child care that her grant would be subject to termination if she did not make those efforts? A. I think the regulations impose an explicit responsibility when mother's presence in the home is not essential that the only deterrent to her participation in training or employment is absence of adequate child care, and she is required by regulations to make such a diligent effort.

Q. I believe that was a fairly straight question. I am en-

titled to a yes or no answer. Would, under the regulations, a mother be told that she would be subject to termination of her grant if she did not make diligent efforts to locate child care? [66] A. Yes.

Q. Would she be told that she could be required to report to the State Employment Service because she was employable, not withstanding that she was not making diligent efforts to find child care? A. You seem to be saying the same thing in a different way, and I've tried at least to convey my understanding of the import and implications of the requirements, that there would be no basis for referring her because there would be other appropriate action that would be required because of her failure to conform to this legal requirement. There is—and I want to say in another way—there is an absolute requirement that a person not be referred unless there is an adequate plan of child care.

* * *

[92] Q. What specifically is meant by "participation"? At what point is a person considered to be participating in a training program? A. Well, I believe that I gave you some of the criteria. One of the problems, however, would be attendance, regularity of attendance.

Q. If a person were referred to the Work Incentive Program but had not yet been placed in a specific training opening within the Work Incentive Program, would that person come within the definition of participation? A. People who are in "hold" status are considered participants in a program. Once they have been enrolled in a program, despite the fact that they are not reporting to a specific training activity, they are still nonetheless participants; and there are always people in the "hold" status in a training program, particularly the Work Incentive Program, where

they shift over from [93] one component to another. As they, let's say, finish orientation courses, they move to the basic literacy education.

Q. If a person involved in the Work Incentive Program were to be placed in the "hold" status, would that person be considered participating in the Work Incentive Program? A. Yes, the only difference being the person that volunteers and one who does not volunteer, for it relates to the sanctions that you may exact against a person. A person who volunteers may not be penalized for his failure to participate.

Q. But this person who volunteers would not be considered to be employable for purposes of 71MB-49? A. That's correct.

Q. Again, we are still referring to this same exception to the definition of employability. Would you tell me what is meant by "full time participation" in a training or rehabilitation program? A. Well, conceivably there are some part time training activities which will not relieve a person of the obligation to participate, [94] to fulfill these requirements. The requirement about full time is not related to any specific set of hours but the conception that the training agency has, whether the program is full or part time.

Q. Does that mean that if the training agency considers a program to be part time that a person participating in that program would still be deemed employable? A. That's right. For example, a person who would be in basic literacy, which is not a full time component—and there are still such programs in New York State—would still be obligated to report.

Q. Would that apply to persons who do part time work under the Work Incentive Program? A. The people in the Work Incentive Program are all full time. Now it is conceivable that in time and place they may be part time, but it is our understanding that they are full time.

Q. Would the basic education course be considered to be full time? A. I think that would depend on the number of hours in which the individual participates. We have said to the State Employment Service, because of [95] our concern, that people not participate in some instances on full-time basis ought to be coupling basic literacy with work experience to insure they would be full time participants.

Q. So a person in the Work Incentive Program who would happen to be in a part time training position would be considered employable for purposes of this regulation of New York State? A. If he was so reported to us, yes; but as I have said to you, we have considered the Work Incentive Program and MDTA programs as full time training programs because they are so conceived by legislative act and purpose.

* * *

[132] Q. Mr. Phillips, is there any specific provision for defraying the cost of transportation to [133] pick up one's public assistance check at the State Employment Service? A. No, none at all.

Q. So that the recipient bears the expense of transportation to pick up the public assistance check? A. He is expected to use his regular basic allowance for this purpose.

Q. Are there any provisions in the statute or the regulations which provide that the factor of distance from an employment service shall be a good cause for a person to refuse to pick up his check at the State Employment Service once that person has been determined to be employable? A. There is not.

Q. So that if one is employable, one must travel to the State Employment Service wherever it may be located at his own expense, is that correct? A. Well, there is a qualification

to what you state. It is true to the extent there is some outreach service in the outlying areas where the State Employment interviewer goes out from the central office out into a community.

Q. This is the State Employment Service procedure? A. Yes.

[134] Q. Established by them? A. That's right. They have always had that for registration purposes, and at our insistence they integrated check delivery with it now. To that extent they agreed that they would take on this responsibility. I think that if you want to know the extent to which this has been implemented, you would have to ask them.

Q. There have been indications in this case that the department is in the process of drafting regulations to provide transportation assistance to these people. Are those regulations now being provided? A. I think that your conclusion is somewhat inexact. Let me just make two comments about transportation: (1) that we were aware that there was a possibility that there would be problems of people who are remote from Employment Service offices reporting on a regular basis because of a lack of transportation. We made a commitment that we would follow, monitor the program very closely in order to learn what the dimension of this problem was, and determining whether any appropriate and corrective action was necessary. [135] So far we have not had any information sufficient to help us reach a conclusion.

Q. On the other score, however, and that relates to car-fare, are regulations presently being drafted dealing with this issue? A. No, but there is one aspect on car-fare that I would like to touch on because you use the word "car-fare" generally. We might as well get it in the record. We have now had discussions with the Employment Service about providing tokens to people who are being required to report

to jobs, and we are on the verge of consummating an official agreement implementing those discussions. That would apply to districts, places where there is public transportation, and I think that it will probably be implemented in a handful of districts and expended, branched out.

Q. At this point do you require a specific report from local offices on transportation problems that have been arising? A. Not a specific report.

Q. How are you conducting the study? A. Our field staff in our area offices are in contact with the agencies to determine what [136] problems have arisen. We have a feedback from the Employment Service. So far we haven't had any significant feedback on this problem.

Q. At the present time there is no provision for paying transportation to a job interview, is that correct? A. Yes, as I said, there is no provision for providing car-fare for the client to report to the Employment Service, but we are implementing an agreement which would provide car-fare in the form of tokens to people who are being referred to jobs.

Q. Are they now being provided with car-fare? A. I think not. I don't think that the agreement has been implemented as of this date.

* * *

[153] Q. In 71MB-49, where you are conveying to local officers information about Section 385.3 D (d), there is a reference to "priority being given to referral to the Work Incentive Program". Could you tell me what is meant by "priority" in that context? A. You are talking about 385.4-(e).

Q. 385.3 D (d). A. Well, there is a statutory responsibility under the Social Security Act to refer ADC unemployed fathers to the Work Incentive Program within 30 days, and it was an effort to accommodate that statutory provision wherever there is a Work Incentive Program.

Excerpts from Deposition of Edward Phillips.

Q. Would this only apply to fathers in the ADCU Program? A. It might apply to others, too, but this is where [154] there is affirmative statutory responsibility. The way it works, if we talk about procedure, what happens is the person gets referred. He doesn't get immediately enrolled, sometimes within 30 days, because there is a waiting list on the part of the Employment Service. In the interim he would continue to report under 131 (.4) as long as he was on the waiting list.

Q. I take it it does refer to persons who are inappropriate for WIN. Would persons found inappropriate for the Work Incentive Program be referred, be found employable under the 1971 work rules in New York State? A. There is a possibility but I have some reservations about giving you a clear affirmative answer. I think it depends to some measure on what one means by "appropriate", what one means by "an employable". There are some gradations of difference. The Federal requirement of appropriations is much broader and more elastic and places more of assessment responsibility on the Employment Service.

Q. Is there a requirement in the Work Incentive Program that a mother exercise due diligence in her search for child care? [155] A. There is not.

Q. So that a mother who was found inappropriate, by virtue of the unavailability of child care, for WIN, might be found to be employable within the New York work rules because of her failure to make diligent effort to find child care? A. Well, I think, as I said, I think that is a very fine gradation. I'm not sure I would have unequivocal agreement with what you are saying.

Q. Does Federal regulation prohibit the participation in WIN of persons for whom adequate child care is not available? A. That is correct, but that is exactly the same requirement as 131 (4).

[3] **Excerpts from Deposition of Jule Sugarman.**

JULE M. SUGARMAN, a witness herein, being first duly sworn, was examined and testified as follows:

Examination by Mr. Freed:

Q. Mr. Sugarman, could you tell us your position at the present time? A. I am the Commissioner of Social Services of the City of New York.

Q. Do you hold any other positions? A. I do. I hold the position of Administrator of the Human Resources Administration, which is the parent agency of the Department of Social Services.

* * *

[29] Q. A two-part question: Part to the change in the city's procedures which provided for an employability interview prior to any declaration of employability, when a recipient received a letter in the mail stating that he or she was employable, did that recipient have a right to a fair hearing on that issue? A. Yes.

Q. To clarify, or amplify that response, could the recipient contact the social services department, complain about his or her classification as employable, demand a fair hearing on that issue and not be required to report to the employment service pending the determination of that issue? That is the State Department of Social Services. A. Let me be sure I understand your question. You are, as I understand it, positing a situation in which the individual has been notified that he is considered employable and required to report to the employment service and he has advised the local Department of Social Services that he considers himself not to be employable. Your question then is, was he at that time required to continue to report to the employment service until the issue could be [30] resolved by the local Department of Social Services?

Q. Let me rephrase it?

Upon receipt of such a letter informing the recipient that he has been declared employable, could the recipient demand a state fair hearing on the issue of employability, and pending the determination of that issue, would he be required to fulfill the obligations of an employable person?

A. It is my feeling that until the—I cannot testify directly on this because of the fact that I was here a very little time when these provisions were in effect—my understanding of the situation, however, though, is that until such time as an adverse action had been actually taken against him, the termination of assistance, that he would not have a cause of appeal to the state.

Q. Deputy Commissioner Phillips, in a deposition in this action, stated that the issue of employability would be contested in a hearing upon the issue of non-compliance with the requirements of the law. Does that statement correspond to the statement that you have just made? A. To the best of our knowledge the state does not hold that a determination of employability [31] in and of itself is an adequate cause for appeal. There is a section of the board rules, Section 84.3B3, that permits an applicant or a recipient to appeal a determination that he must participate in a service program.

In my judgment, however, the question of employability is not a question of determining that an individual must participate in a service program, and therefore this rule probably does not apply. I think it is correct to say that the practice in the department was to assume that no appeal could be made until an adverse action, such as termination of assistance, had occurred.

Q. Are you aware of the procedures followed in connection with the work incentive program? A. No.

Excerpts from Deposition of Jule Sugarman.

Q. I read to you now from Section 388.7 of the New York Code of Rules and Regulations, Title 18 of the New York Code of Rules and Regulations, pertaining to right to hearing under the work incentive program, and I quote: "A social services official shall inform ADC recipients in writing, and orally whenever practicable, of their right to a fair hearing by the department and the method by which a fair [32] hearing may be obtained, when", and then sub-2 "the person is aggrieved because he has been determined appropriate for referral to the work incentive program and disagrees with such determination." A. I believe that that provision derives from the requirements of federal law which are applicable to the "ADC" and "ADCU" categories but not to the home relief program.

Q. Is it your understanding that such a provision for a hearing is present in the work incentive program but not present under the state work amendments which were enacted in 1971? A. It is my understanding that federal law does require such a hearing in the case of "ADC" and "ADCU" for work incentive referrals, but such requirement does not exist unless further action is taken by the local Department of Social Services for home relief and "ADC" and "ADCU" in referrals under Section 131.4.

Q. Can a recipient of "ADC" or "ADCU" be referred to the State Employment Service pursuant to 131.4 of the New York social services law and not be referred to the work incentive program? A. Yes, because the state plan implementing [33] the work incentive program makes participation in the WIN program voluntary for women with children, whereas the requirements of referral under Section 131.4 do not automatically exempt women with children.

Q. So that a woman with children who is not subject to other than voluntary referral to the work incentive program

could be referred to the employment service pursuant to 131.4 and required to accept employment? A. If day care were available, yes.

Q. If a person receiving "ADC" or "ADCU" has been referred to the work incentive program but no slot is available at the present time and therefore that person is put on what I believe is termed a "hold" in the work incentive program, is that person subject to referral for employment under Section 131.4? A. Yes. All individuals participating in the work incentive program are subject to referral whether or not they are in hold status.

Q. If a person in that hold status were referred to a job and refused that job on what he felt were good-cause grounds, who would conduct the hearing into the question of good cause?

[34] A. If the individual were referred under Section 131.4 offered a job under that referral and refused, the hearing would be conducted by the Department of Social Services. The Department of Social Services would initially determine whether the individual should be terminated. If a hearing were requested, it would be held by the State Department of Social Services.

Q. Would such a person on a hold status in the work incentive program, if he were found to have refused that job referral without good cause, be subject to immediate termination of benefits? A. Yes.

Q. Would a period of counseling prior to termination be available to him? A. The law does not require such a period of counseling in the case of Section 131.4. Quite the opposite. It imposes a duty to terminate.

* * *

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Deputy Commissioner Eleanor Walsh of the State Department of Social Services, as Acting Commissioner in the absence of the Commissioner, George K. Wyman, being duly sworn, responds to the plaintiffs' first interrogatories, as follows (The text of each question is set forth before each answer as requested):

2.0 *General*

2.1 Q. Set forth the correct name and address for each named Defendant and set forth the correct job title for each official who is a named Defendant.

A. 1. New York State Department of Social Services (hereinafter Department) 1450 Western Avenue, Albany, New York 12203.

2. George K. Wyman, State Commissioner of Social Services (hereinafter Commissioner) 1450 Western Avenue, Albany, New York 12203.

2.2 Q. Briefly describe the job and duties of the named Defendants. In particular, state the statutory provisions, regulations or written statements which set forth their duties and responsibilities.

A. 1. The Department is the State executive and administrative agency which administers all the forms of social services for which the State is responsible and which supervises all social services work, as the same may be administered by any local unit of government. It distributes

State and Federal funds to local social services districts as authorized by law. The Department also is the "single State agency" for the programs of Aid to Dependent Children, Assistance for the Aged, Blind and Disabled, and Medical Assistance For Needy Persons, for which programs there is Federal reimbursement pursuant to the provisions of Titles IV, XVI, and XIX of the Social Security Act. There is detailed statutory provision for the authority and responsibilities of the Department throughout the State Social Services Law, including but not limited to sections 5, 20, 29, 32, 36-a, 74-h and various sections of Articles 5 and 6 thereof.

2. The Commissioner is the chief executive and administrative officer of the Department. His powers and duties are specifically provided for in various sections of the Social Services Law including but not limited to sections 11, 12, 13, 14, 15, 17 and 34 thereof.

2.3 Q. Set forth the names, addresses and official positions of any employees of DSS who are not named Defendants and who have policy-making authority in the area of promulgating and implementing regulations or HR, VA, ADC, ADC-U, OAA, APTD, and AB eligibility and administration and indicate as to each such employee, the scope of such authority.

A. There are no such employees. Only the Commissioner has policy-making authority.

2.4 Q. State whether the persons named in response to 2.3, if any, act under the direction and/or control of any of the named Defendants. Indicate which of the named Defendants possesses such authority.

A. See answer above to question 2.3.

2.5 Q. Briefly describe the procedure for promulgating regulations for the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs. In particular state:

a. What official or officials may initiate changes in the New York State Plans and/or in any other regulations relating to the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs; what official, officials or body must approve a regulation for it to become effective;

b. What chronological procedural steps beginning with the source of an initial proposal are taken to promulgate such regulations;

c. Identify the individuals responsible for drafting such regulations;

d. As to regulations concerning ADC, ADC-U, OAA, APTD, and AB whether any written or other expressed approval of the Department of Health, Education and Welfare is solicited and/or obtained prior to the promulgation of such regulations;

e. Whether the expressed approval referred to in 2.5(d) is solicited and/or obtained after such changes have become effective.

A. Only the Commissioner may make a change in the Regulations of the State Department of Social Services. There are no formal procedures for such a change other than those necessary to comply with the requirements of the Executive Law for the filing of a Regulation with the Secretary of State. Recommendations for a policy change are

often made by Deputy Commissioners but the Commissioner may consider suggestions made by other persons in the Department and also suggestions from sources outside the Department such as from local social services districts, the Federal Department of Health, Education and Welfare (hereinafter HEW), or from any interested person or organization. Generally, the Commissioner submits proposed policy changes to his Deputy Commissioners for their consideration and opinion prior to making his final decision. There are no persons specifically charged with the responsibility for drafting regulations. Many persons throughout the Department may participate in the drafting of a Regulation, depending upon the subject matter thereof.

Proposed Regulations concerning ADC, ADC-U, OAA, APTD, and AB are sometimes submitted to HEW for its consideration prior to promulgation. All changes in the Regulations, after promulgation, are submitted to HEW for its consideration.

26 Q. State briefly the facts surrounding the submission and approval of the New York State Plans. In particular, state:

a. What was the last date that New York submitted each of the New York State Plans for approval by the Secretary of HEW;

b. Whether the Secretary of HEW or his agents have ever withheld approval, questioned the compliance or otherwise indicated disapproval of any or all provisions of any of the New York State Plans. Specify each such instance.

c. Whether the New York Work Rules have been submitted for approval as part of the New York State Plans; if

the answer is affirmative, specify the date of such submission and the action taken by the Secretary of HEW;

d. Whether the New York State Plans have ever been the subject of full review by the Secretary of HEW. Specify the date, issues and outcome of such reviews.

(The plaintiffs' attorney has advised that this question relates only to the Work Rules Plan.)

A. The statutory enactments (L. 1971, C. 101, C. 102) on the Work Rules were submitted to the Regional Office of HEW for approval as amendments to the State Plan on July 8, 1971 as part of Transmittal 71-41. The Department has not, to date, received any notification from HEW of approval or disapproval of these plan amendments. The new Department Regulations, Part 385 (Restoring Employables to Self-Support), a copy of which is hereto annexed as Exhibit 1,* will soon be submitted to HEW for approval as a plan amendment.

2.7 Q. Identify each written communication, including any letters, notices, evaluations, reports or orders by the Secretary of HEW or his agents and agents of DSS or the County Department which is in any way related to the New York Work Rules. Identify all documents relating to the provisions or administration of New York's, HR, VA, ADC, ADC-U, OAA, APTD, and AB programs prepared by private or governmental evaluators, administrators or analysts if such documents were prepared at the request of and/or were financed in whole or in part by public officials either state or federal and are in any way related to the New York Work Rules. Please attach a copy of each document

*Exhibits are omitted from printed Appendix.

identified in response to this Interrogatory as part of the Answer to this Interrogatory.

A. The Department received a letter from HEW, dated April 28, 1971, annexed hereto as Exhibit 2, commenting on bills then before the State Legislature designed to enact the Work Rules. The Department has transmitted various Administrative Letters to local Social Services Commissioners relative to implementing the Work Rules program. These Letters are identifiable as 71 PWD-34, 43, 48, 52, 54, 64, 74 and 75, annexed hereto as Exhibits 3-10 respectively. As far as deponent knows, there are no identifiable documents related to the Work Rules prepared by private or governmental evaluators, administrators or analysts prepared at the request of and/or financed in whole or in part by public officials, except for those identified herein, and except for the reports of the local social services districts and the State Department of Labor, which reports (from the social services districts) are identified and discussed in answers to other questions in these interrogatories.

2.8 Q. Identify each oral communication between employees of DSS or the County Department and HEW which is in any way related to the New York Work Rules and give:

a. the date of such communication;

b. the name of each participant in such communication.

A. There are no identifiable records of such oral communications.

3.0 *New York Work Rules—Origins and Authority*

3.1 Q. How long has New York had a statute and/or regulations disqualifying recipients from receiving public assistance for refusal to accept a job referral?

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

A. Section 131 subdivision 4 of the Social Services Law was first enacted by L. 1959, C. 715. In substance, the statute then provided, as now, that a person who refuses employment is ineligible for public assistance. However, even before the enactment of this specific provision, it was always an implied condition of eligibility for public assistance that a person accept available employment and that refusal to accept would render him ineligible. This stems from consideration of section 131 subdivision 1 of the Social Services Law which provides that public assistance is to be furnished for those "unable to maintain themselves" and also from section 132 which provides that investigation of an application for public assistance shall consider the "ability to work of all members of the family". These provisions were in the original enactment of the Social Welfare Law (L. 1940, C. 619) and were found in substantially identical form in sections 77 and 78 of the earlier Public Welfare Law (L. 1929, C. 565).

In addition, with specific reference to the category of Home Relief, section 164, subdivision 4 of the Social Services Law which provides that a person who refuses to report for or perform work to which he has been assigned by the social services official shall become ineligible for Home Relief was re-enacted as part of a permanent work relief program by L. 1959, C. 714. This provision can be traced back to an earlier section 164 enacted by L. 1950, C. 435.

A specific Regulation providing for the disqualification of recipients for refusal to accept a job referral can be traced back to July, 1949. However, such refusal was always considered an implied ground for disqualification in connection with the requirements that recipients register with the State Employment Service going back to 1939.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

3.2 Q. Describe in specific detail the circumstances of the enactment and promulgation of the New York Work Rules. In particular:

a. At the time when the legislation which ultimately became §§ 131(4), 164 and 350-k was pending before the New York Legislature, did any of the named Defendants or their agents communicate with the office of the Governor of the State of New York concerning said legislation;

b. Identify each such communication, including any letters, memoranda, or reports, referred to in 3.2(a). Please attach a copy each of such written communication as a part of the response to this Interrogatory. As to each such oral communication set forth:

(1) the date on which it occurred;

(2) the name of each participant.

c. Identify each person who is responsible for liason between the offices of the Governor of the State of New York and the New York State Department of Social Services and give each such person's official title.

A. This question relates to confidential communications and relationships with the Governor.

3.3 Q. Describe in detail the coverage of the New York Work Rules. Include a statement indicating whether any department policy or regulation beyond those set forth in Letters No. 34, No. 43, No. 48 and No. 52 is utilized in determining the appropriateness of HR, VA, ADC, ADC-U, OAA, APTD, and AB recipients or applicants for referral under §§ 131(4), 164 and 350-k. Give full citations or attach copies of all authorities so utilized.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

A. The coverage of the New York Work Rules is described in detail in Administrative Letters 71 PWD-34, 43, 48, and 52, copies which have already been annexed hereto as exhibits 3 through 6. Further Administrative Letters relating to the operation of the Work Rules were 71 PWD-54, 64, 74, and 75, copies of which have already been annexed hereto as Exhibits 7 through 10. In addition, the Department has promulgated new Part 385 of the Regulations, copy of which has already been annexed hereto as exhibit 1, and has just published a new Bulletin 26, a copy of which is annexed hereto as Exhibit 11. These additional Administrative Letters, new Regulations, and new Bulletin are utilized in determining the appropriateness of recipients or applicants of public assistance for referral under sections 131(4) and 164 of the Social Services Law. There are no referrals under section 350-k of the Social Services Law.

4.0 *New York Work Rules—Operation* (All of the answers to this group of questions covers July, 1971 only, except as otherwise indicated, on a monthly basis, as this is the only month to date for which reports from all local social services districts have been received. The answers only relate to HR, VA, ADC and ADC-U, as the Work Rules are not applicable to OAA, APTD, and AB. The statistical information has been summarized and tabulated in Tables 1-6, annexed hereto as Exhibits 12-17 respectively. The tables show only total figures for all of the affected categories. There is no available breakdown of information according to the individual category.)

4.1 Q. Since July 1, 1971, for each of the following categories of assistance state the number of recipients of

assistance in each such category who have been sent a letter notifying them that they are "employable" under the New York Work Rules and requiring said recipients to report to an office of the State Employment Service ("SES"):

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. Statewide, there were 48,609 applicants and recipients who were required to report to SES, either by written notification or by verbal instructions. For a "county-by-county breakdown" or more accurately for a district by district breakdown, see Table I (Ex. 12).

4.2 Q. Of the total number of recipients referred to in 4.2 state, for each of the following categories, the total number of recipients who, subsequent to the sending of the letter referred to in 4.1, have been reclassified as "unemployable" under the New York Work Rules:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. There were 6,634 persons who failed to comply but continued to receive assistance on the basis of a change in employability status, temporary illness, or "other" circumstances such as the need to review and reevaluate employability status. See Table 5 (Ex. 16) for details for each social services district.

4.3 Q. As to the recipients referred to in 4.2, state by category the total number of recipients rendered "unemployable" by:

a. "illness or significant and substantial incapacity, either mental or physical;"

b. "advanced age;"

c. "full-time satisfactory participation in an approved program of vocational training or rehabilitation;"

d. "the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated . . . and for whom required care is not otherwise reasonably available notwithstanding dilligent efforts for such person to provide others to provide such care;"

e. "the need of such person to provide full-time care for other members of such person's household . . . who are children and for whom required care is not otherwise reasonably available notwithstanding dilligent efforts for such person to provide others to provide such care."

A. We have no available information to answer this question in the form presented. See Table 5 (Ex. 16) for the

available information relative to the reasons for continuation of assistance of those persons who failed to comply.

4.4 Q. Since July 1, 1971, for each of the following categories of assistance state the number of recipients of assistance in each such category who have been sent letters requiring them to report to an SES office because they are full-time participants in approved program of vocational training and rehabilitation:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. We do not have available information.

4.5 Q. State separately the number of recipients, who are participants in the WIN program, referred to in:

a. 4.4(c);

b. 4.4(d).

A. All WIN participants are required to report to SES under the Work Rules. In July, 1971 there were 15,065 WIN participants, of which 10,998 were in ADC and 4,067 were in ADC-U.

4.6 Q. For each semi-monthly reporting period since July 1, 1971 and for each of the following categories state

the number of persons who have been required to report to an SES office to pick up public assistance checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. For this information on a monthly basis, see Table I (Ex. 12) under Recipients—Grantee column of "Total Persons Required to Report to NYSES." (New York City has reported only a total for both applicants and recipients.)

4.7 Q. For each semi-monthly reporting period and for each of the following categories, state the number or recipients referred to in 4.6 who failed to report to the designated SES office:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. For this information on a monthly basis, see Table I (Ex. 12) under Recipients—Grantee column of "Total Per-

sons Who Failed to Report to NYSES." (New York City has reported only a total for both applicants and recipients.)

4.8 Q. For each of the categories of recipients and for each of the periods referred to in 4.7, state the number of recipients who failed to report to the designated SES office because:

a. they did not understand how the new system worked;

b. They wished to cancel their support rather than submit to the new system;

c. they disagreed with their classification as employable and were demanding hearings on their status.

A. We have no available information with respect to parts a and b. With respect to part c there were 285 requests for fair hearing received by the Department during the months of July and August of which 137 were in the categories of HR and VA, 78 were in ADC and ADC-U, and 69 are still unclassifiable as to category.

4.9 Q. State the total number of recipients for each of the following categories, whose public assistance has been terminated for failure to report to an office of SES to pick up their checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. See Table 3 (Ex. 14) for number of persons (grantees) who failed to report to SES. Information on termination is reported in Table 4 (Ex. 15) but there is no available breakdown as to the number of terminations for failure to report to SES.

4.10 Q. As to each category of public assistance (HR, VA, ADC, ADC-U, OAA, APTD and AB) state the total number of recipients of public assistance whose assistance has been terminated for each of the following reasons:

a. Failure to obtain and file with the social service district at least once in every two-week period a statement that no employment is available;

b. Willful failure to report for an interview at an employment office with respect to employment when requested to do so by such office;

c. Willful failure to report to such office the result of a referral to employment;

d. Willful failure to report to employment.

A. Our only available information relates to the total number of terminations for failure to comply as reported in Table 4 (Ex. 15).

4.11 Q. Set forth in detail the procedure followed by a local Social Services Department in evaluating the availability of recipients for employment and culminating in the sending of a letter to the recipient notifying him that he has been classified as "employable".

A. The procedures are specified in sections 385.1, 385.3 and 385.5 of the Regulations and are amplified in 71 PWD-43 (Ex. 4), PWD-52 (Ex. 6), PWD-64 (Ex.8), and revised Bulletin 26 (Ex.11).

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

4.12 Q. Set forth the number of recipients of ADC and ADC-U terminated because of failure to exercise due diligence in search of child-care.

A. According to deponent's best knowledge, information and belief, there have not been any terminations because of failure to exercise due diligence in search of child care.

4.13 Q. Set forth in detail the procedure followed when a recipient of public assistance who has been declared "employable" contests said finding of "employability".

A. In 71 PWD-64 (Ex. 8) it is specified that when a recipient of public assistance contests a finding of "employable", arrangements must be made immediately to secure a definitive medical determination of employability. Prior to a termination of assistance for failure to comply with the Work Rules a recipient must be given at least 7 days notice of the proposed termination with an opportunity for a pretermination review in accordance with the procedures under section 351.26 of the Regulations. If a final notice of termination is made after the review afforded under section 351.26 the recipient may request a fair hearing in accordance with the procedures of Part 84 of the Rules of the State Board of Social Welfare. Also, an applicant who has been denied assistance may request a fair hearing.

4.14 Q. If a hearing is provided to recipients on the issue of their "Employability" state, for each of the following categories the number of said hearings provided to recipients since July 1, 1971:

a. HR

b. VA.

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. There were 48 hearings held during July and August in HR and VA, and 13 were held in ADC and ADC-U.

4.15 Q. List in detail any public appropriations or expenditures specifically for the implementation of the New York Work Rules. State what portion of such monies, if any, are utilized for

a. educational training;

b. day-care facilities;

c. job development;

d. job counseling.

A. There are no State appropriations to the Department specifically for the implementation of the Work Rules. A State appropriation of $2,500,000 was made to the Department of Labor. Deponent has no knowledge of such appropriations or expenditures by any other governmental units.

4.16 Q. State what notice, if any, is given to a recipient of his right to contest his classification as "employable" under the New York Work Rules.

A. A recipient is given the 7 day notice under section 351.26 of the Regulations and of his right to have a pre-

termination review of the social services official's proposed determination. In 71 PWD-54 reference is made to the form of letter to be used and a copy of the letter referred to, taken from Bulletin 91B is annexed hereto as Exhibit 18. Also, section 84.4 of the Rules of the State Board of Social Welfare specifies that applicants and recipients are to be informed in writing and orally of their right to a fair hearing whenever the social services official makes any decision adversely affecting their receipt of assistance or amount thereof.

4.17 Q. Are public assistance recipients referred for employment under the New York Work Rules by an employee of a DSS? Is this policy state-wide? If not, list any social services district, county or city in which such referrals are made by Social Services employees.

A. The Department of Labor has the responsibility to provide manpower services and make referrals to employment. There may be occasional referrals to employment directly by a social services district but there is no data available as to the extent of such referrals.

4.18 Q. Describe in detail the procedures by which a recipient is apprised of a job offer under the New York Work Rules. In particular, state:

a. What procedure is used to determine what employment opportunities are available in the community;

b. What standards are used to determine the suitability of the employer, the type of employment and the conditions of employment for referrals to private employment under the New York Work Rules;

c. What explanation of what he must do, if any, is given to a recipient at the time he is informed of a job offer;

d. Whether a recipient at the time he is informed of a job offer;

d. Whether a recipient of ADC or ADC-U is expressly informed of the existence of WIN prior to being referred to employment offered pursuant to the New York Work Rules;

e. Whether a recipient of ADC or ADC-U is given an opportunity to volunteer for WIN prior to being referred to employment offered pursuant to the New York Work Rules;

f. At what point a termination of grant payments under the New Work Rules takes effect when a recipient refuses to accept the job;

g. Whether a recipient terminated under the New York Work Rules pursuant to § 131(4) is afforded the opportunity of an evidentiary hearing prior to the effective date of termination of benefits; If so, explain the policy mandating such hearing, or if such policy is written, attach a copy of any written policy mandating such a hearing;

h. Whether any additional persuasive efforts such as counseling are actually given a recipient declining to accept a job referral under the New York Work Rules after an initial refusal to accept an offered job;

i. When may a recipient, whose assistance is terminated pursuant to the New York Work Rules, reapply for public assistance; Specify all the conditions or qualifications for acceptance of such application and specify the statutes, regulations or written policy which sets forth such conditions or qualifications.

A. We are unable to respond to parts a, b, and c of the question as they relate to procedures of the Department of Labor.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

With respect to part d, section 385.4 of the Regulations specifies that in social services districts where a WIN program is operating, each employable recipient of ADC or ADC-U determined to be appropriate shall be referred thereto. Such referral to WIN shall take priority over the manpower services to be made available to such recipients. It should also be noted under the same regulation that a participant in a WIN program is nevertheless required to continue reporting to SES in accordance with the Regulations.

With respect to part e, section 388.15 of the Regulations gives recognition to a volunteer for referral to WIN in establishing priorities for determination of appropriateness of referral. Again it should be noted that participation in WIN does not excuse the participant from the reporting requirements under the Work Rules.

With respect to part f, a termination cannot be affected prior to 7 days after the refusal. How soon after the 7 days a termination is effected depends upon various factors such as when the social services district is first notified of the refusal, when the social services district begins to process the termination procedure, and the course of the pre-termination review procedure.

With respect to g, a recipient is afforded such review prior to the effective date of termination of benefits under the provisions of section 351.26 of the Regulations, a copy of which (in its most recently amended form effective July 23, 1971) is hereto annexed as Exhibit 19.

With respect to h, the answer is no.

With respect to i, the sanctions for non-compliance with the Work Rules, including the duration of disqualification

for assistance is specified in section 131 subdivision 10 of the Social Services Law and section 385.6 of the Regulations.

4.19 Q. Describe in detail the procedures used to determine the availability and suitability of child care for employable individuals.

A. Sections 385.3 and 388.4 of the Regulations detail such procedures.

4.20 Q. Describe in detail the procedure and standards used to determine whether an employable individual for whom suitable child care services are available, should be referred to the WIN program or to other employment programs or opportunities. In particular state whether there are any statutes, regulations, or written policy statements which set forth the criteria or standards to be used in such determinations.

A. The policy is that referral to the Win program takes priority over other manpower services to be made available to such recipients (Reg. 385.4).

4.21 Q. Identify each report received from county or city Social Services departments pursuant to the requirements of § G of Administrative Letter No. 43 (pp. 17-19). Please attach a copy of each such report as a part of the response to this Interrogatory.

A. Annexed hereto, as a combined Exhibit 20 are copies of the reports received from the 64 social services districts for the month of July. These were used by the Department as work sheets for the preparation of the summary tabulations (Ex. 12 through 17).

5.0 *New York Work Rules—Public Works Project* (The statistical information supplied in answer to these reports is

incomplete since all of the 64 social services districts have not yet submitted their reports for the month of July 1971. The summary tabulations, Tables 1-5, annexed hereto as Exhibits 21-25 are based upon the reports supplied by 57 districts).

5.1 Q. For each of the following categories, state the total number of employable recipients of public assistance who have been referred to public works projects pursuant to §§ 164 and 350-k of the New York Work Rules:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. Referrals to public works projects have only been made in HR and VA under section 164 of the Social Services Law. See Table 2 (Ex. 22) for number of recipients who have been placed in public work projects. We have no available data on referrals as a separate statistical item. Although New York City has not yet submitted its July report, the Department has been advised that no placements were made in that district in July.

5.2 Q. As to each public works project created pursuant to the New York Work Rules state the number of jobs provided in each of the following categories described in Letter No. 48:

a. Projects to maintain or develop adequate work habits;

b. Projects to maintain and improve existing skills;

c. Projects to develop new skills;

d. Projects of special interest to the local government.

A. We have no available information.

5.3 Q. Identify each report received to date from county or city Social Services departments pursuant to the requirements of § F of Administrative Letter No. 48 (pp. 8-10). Please attach a copy of each such report as a part of the response to this interrogatory.

A. Annexed hereto as a single Exhibit 25, are reports from 57 social services districts submitted to date.

6.0 *Work Incentive Program—WIN* Q. Where questions in the following group of interrogatories ask for total figures for the State of New York, Plaintiffs also request a county-by-county breakdown of all such total figures.

6.1 Q. State what Social Services district, counties and/or cities in New York have been determined by the Secretary of Labor to be appropriate for the WIN program and the date each Social Services district, county, or city was so designated. List for each of these Social Services districts, counties or cities, the number of authorized WIN openings or slots for each year of the WIN program.

A. See the tabular summary of the available information annexed hereto as Exhibit 27.

6.2 Q. State the annual average level of utilization of these openings or slots for each district, county or city where

openings were authorized for such districts, counties or cities.

A. See Ex. 27.

6.3 Q. State the total number of ADC and ADC-U recipients who have been involuntarily referred to WIN in the State of New York for each year since inception of the WIN program.

A. There is no available information as to the number of involuntary referrals as distinct from voluntary referrals. Annexed hereto as Ex. 27 is a tabular summary of the number of WIN referrals.

6.4 Q. State the total number of ADC and ADC-U recipients who have volunteered for WIN in the State of New York for each year since the inception of the WIN program.

A. We have no available data as to the number of volunteers.

6.5 Q. List in detail the priorities utilized, if any, in determining what recipients will be referred to the WIN program.

A. Section 388.15 of the Regulations specifies the priorities for determination of appropriateness for referral.

6.6 Q. List the total referrals, if any, of ADC recipients who are mothers of pre-school age children for the State of New York for each year since the inception of the WIN program.

A. We have no available data.

6.7 Q. State the total, if any, of ADC recipients who are mothers of pre-school children who have volunteered for enrollment in WIN in the State of New York.

A. We have no available data.

6.8 State whether day-care arrangements approved under state standards are made available to volunteers or referees under the WIN program. State how many slots in day care centers are actually available to ADC recipients in the State of New York.

A. Section 352.9 of the Regulations provides that day care shall be provided when the homemaker is receiving occupational training. To the same effect is section 385.3 with specific reference to a mother or female caretaker relative of children under the Work Rules. Also, under section 311.8 of the Regulation, it is specifically provided under the WIN program that needed child care services shall be provided by the social services district. We have no available data as to the number of slots in day care centers available specifically for ADC recipients, nor does deponent have any knowledge, information or belief that such slots exist.

6.9 Q. State the total number of ADC and ADC-U recipients whose assistance has been terminated for each of the following reasons:

a. Refusal to accept referral to WIN;

b. Refusal to accept training or employment under WIN;

c. Refusal to accept 60 days of counseling prior to termination under WIN.

A. We have no available data.

7.0 *Job Type.*

7.1 Q. Indicate the total number of

a. public works jobs

b. jobs in the regular economy

A. to which recipients have been referred pursuant to the New York Work Rules and, as to each such total indicate how many of such jobs are classified in each of the following categories:

a. Apparel Industries

b. Hotel and Restaurant

c. Household

d. Industrial

e. Office (Commercial)

f. Professional

g. Technical

h. Service

i. Agricultural

A. With respect to part a, see Table 1 (Ex. 21), showing number of available slots and number of slots filled during July. With respect to part b, we have no available information but this may be available from the Department of Labor.

7.2 Q. Indicate the number of public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are classified in each of the categories set forth in 7.1.

A. We have no available data at this time as to which projects were established either before or after July 1, 1971 but this information will be available shortly.

7.3 Q. Indicate the number of public works projects jobs to which recipients have been referred which pay:

a. From $.50 to $1.00 per hour;

b. From $1.00 to $1.50 per hour;

c. From $1.50 to $2.00 per hour;

d. From $2.00 to $2.50 per hour;

e. From $2.50 to $3.00 per hour;

f. From $3.00 to $3.50 per hour;

g. From $3.50 to $4.00 per hour;

h. From $4.00 to $4.50 per hour;

i. More than $5.00 per hour.

A. We have no available data at this time but this information will be available shortly. Under the provisions of section 385.9 of the Regulations, payment credits for work shall be at the State minimum wage or at the wages paid to the local government employee in the classified services for comparable work.

7.4 Q. Indicate the number of jobs in the regular economy in each salary category set out in 7.3 to which recipients have been referred pursuant to the New York Work Rules.

A. We have no available data but this information may be available from the Department of Labor.

7.5 Q. Indicate the number of jobs in public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are in each of the salary categories set forth in 7.3.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

A. We have no available data at this time but this information will be available shortly.

8.0 *Individual Recipients*

Q. Identify specifically and attach copies of all documents in the possession of state or local welfare departments relating to the cases of the following individuals. Include in this request copies of all notices to the clients, or letters or communications concerning fair hearings or appeals to the State Department of Social Services, or hearing officers reports, all notes or other documentary records of official actions, all narrative reports prepared by the case workers, and any other written material prepared by or available to the named Defendants that relate to the eligibility of the following recipients:

a. Dolores Dublino, 15th Street, Buffalo, New York;

b. Doris Jimerson, P. O. Box 53, Lantens, New York 14091;

c. Virginia Michael, Elvira Michael, Norman Michael, 3056 Wende Road, Alden, New York;

d. Janie Lee Phillips, 823 Virginia Street, Buffalo, New York;

e. Maria Marfoglia, 418 Busti Street, Buffalo, New York;

f. Henrietta Hunter, 97 Norwood Street, Buffalo, New York;

g. Mrs. Ollie Swanson, 242 Orange Street, Buffalo, New York.

A. A search of the Department's records has disclosed to date only a fair hearing record of Henrietta Hunter. Copies

of all the available documents in that file are annexed hereto as a single Exhibit 29. A copy of the stenographic transcript of the hearing will be available shortly.

s/ ELEANOR WALSH,
Acting Commissioner.

Dated: Albany, New York.

Sworn to before me
this 10th day of September, 1971.
s/ G. Jeffrey Haber,
Notary Public,
Rennselaer County
3/30/73.

Memorandum

State of New York Department of Social Services

Form DSS-524 (Rev. 11/68)
Formerly BOA-100

To: Mr. Robert B. Keyes Date: December 1, 1971
From: Marion R. Farren Subject: Dublino vs Wyman
(Donald W. Lyons)

The following is in response to the questions in Mrs. Coon's letter of November 5, 1971.

1. The answer to the question as to whether the numbers in the statistical material relate to persons or transactions is that such material relates to persons.

2. The Department has still not been able to obtain a New York City breakdown as to "applicants, grantees and

Memorandum.

other recipients" but efforts are being made to obtain this information in future months.

3. New York City did not submit the work relief summaries for August and September. It would appear that this information, for all practical purposes, is no longer retrievable.

4. Work relief statistics for the number of slots and the number of slots filled are figures for each month only and are not cumulative figures.

5. The material furnished earlier in response to questions 7.3 and 7.5 were based on reports received from upstate districts. Question 7.3 referred to the number of public work project jobs to which recipients have been referred. Our answer was 2,890. Question 7.5 referred to the total number of jobs that had been created in public works projects. Our answer was 6,554. This indicates, of course, that not all jobs created during the three month period had yet been filled.

6. The Department has no further breakdown information on the statistics reported in Table 5 of Exhibit 16 and cannot amplify the answer to question 4.2.

7. As to the discrepancies between referrals and failures to report in Tables 4 and 5 of August and September, these discrepancies result from New York City's report of a group of cases called "in process" which it said did not fit into any of the categories in the Tables.

Answer of Department of Labor to Plaintiffs' Interrogatory.

NEW YORK STATE DEPARTMENT OF LABOR

RE: DOLORES DUBLINO,

against

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES.

ANSWERS TO INTERROGATORIES DIRECTED TO DEFENDANTS NEW YORK STATE DEPARTMENT OF LABOR AND LOUIS L. LEVINE

2.0. *General*

2.1 *Set forth the correct name and address for each named Defendant and set forth the correct job title for each official who is Named Defendant.*

Answer: Louis L. Levine is the Industrial Commissioner. His address is the Department of Labor, State Campus, Building No. 12, Albany, New York, 12201.

2.2. *Briefly describe the job and duties of the named Defendants. In particular, state the statutory provisions, regulations or written statements which set forth their duties and responsibilities.*

Answer: The Industrial Commissioner is the head of the New York State Labor Department (Labor Law, Section 10). The general powers and duties of the Commissioner are enumerated in Section 21 and in other sections of Article 2 of the Labor Law. Specific powers and duties of the Industrial Commissioner concerning the Division of Employment and its Employment Service are set forth in Title 3

of Article 18 of the Labor Law, particularly Sections 530, 531 and 532 of the Labor Law.

2.3. *Set forth the names, addresses and official positions of any employees of the Department of Labor who are not named Defendants and who have policy-making authority in the area of promulgating and implementing regulations relating to the administration of referrals under the New York Work Rules.*

Answer: The Executive Director of the Division of Employment is Alfred L. Green (see Labor Law, Section 530, as amended effective May 1, 1970) and the Director of the Employment Service Bureau of the Division of Employment is Nelson F. Hopper. Their address is Division of Employment, State Campus, Building No. 12, Albany, New York 12201.

2.4. *State whether the persons named in response to 2.3, if any, act under the direction and/or control of any of the named Defendants. Indicate which of the named Defendants possess such authority.*

Answer: Mr. Green and Mr. Hopper are appointed by and act under the direction and control of the Industrial Commissioner, Louis L. Levine.

3.0 *New York Work Rules—Operation*

The following group of interrogatories asks for total figures for the State of New York. For each answer Plaintiffs also request a county-by-county breakdown of such total figures.

3.1 *For each semi-monthly reporting period since July 1, 1971 and for each of the following categories state the number of persons who have been required to report to an SES*

office to pick up public assistance checks: (HR, VA, ADC, ADC-U, OAA, APTD, AB).

Answer: This information is not available. The Division of Employment maintains only a district (not county) control on the number of public assistance checks received from departments of social services, number of checks distributed to public assistance recipients, and number of checks returned to departments of social services—see answer to 3.2.

3.2 *For each semi-monthly reporting period and for each of the following categories, state the number of recipients referred to in 3.1 who failed to report to the designated SES office: (HR, VA, ADC, ADC-U, OAA, APTD, AB).*

Answer: Information on categories of recipients, such as HR or VA, is not available. Information on the number of recipients who failed to report to the designated SES office may be inferred from the following data on the disposition of public assistance checks:

July, 1971—First Cycle

District	*Received from SSD's*	*Distributed*	*Returned to SSD's*
Buffalo	7,708	6,718	990
Binghamton	1,028	891	137
Albany	1,310	1,023	287
Syracuse	1,042	871	171
Rochester	1,359	1,036	323
Utica	988	817	171
Long Island	2,284	1,385	899
Westchester	593	383	210
New York City	11,824	8,959	2,865
Total	28,136	22,083	6,053

Answer of Department of Labor to Plaintiffs' Interrogatories.

July, 1971—Second Cycle

District	*Received from SSD's*	*Distributed*	*Returned to SSD's*
Buffalo	4,069	3,283	786
Binghamton	1,193	1,019	174
Albany	1,028	850	178
Syracuse	727	611	116
Rochester	1,724	1,382	342
Utica	938	734	204
Long Island	2,487	1,574	913
Westchester	519	373	146
New York City	18,340	14,380	3,960
Total	31,025	24,206	6,819

3.3 *State the total number of recipients for each of the following categories, whom SES has referred back to DSS for failure to report to an office of SES to pick up their checks: (HR, VA, ADC, ADC-U, OAA, APTD, AB).*

Answer: Since SES does not see recipients who fail to pick up their checks, it is impossible for SES to refer them back to DSS for this reason.

3.4 *As to each category of public assistance (HR, VA, ADC, ADC-U, OAA, APTD and AB) state the total number of recipients of public assistance referred back to DSS for each of the following reasons:*

Answer: SES does not break down its statistical counts by category of public assistance. In many instances, the category is not known to SES.

a. *Failure to obtain and file with the social service district at least once in every two-week period a statement that no employment is available.*

Answer: SES does not refer recipients back to DSS for this reason. In July, 1971, SES issued 13,272 "no employment available" statements.

b. *Willful failure to report for an interview at an employment office with respect to employment when requested to do so by such office.*

Answer: Inasmuch as a recipient did not report to SES, it is impossible for SES to refer him back to DSS.

c. *Willful failure to report to such office the result of a referral for employment.*

Answer: None.

d. *Willful failure to report for employment.*

Answer: In July, 1971, 2,564 recipients refused referral to employment, on 2,857 occasions; 1,780 accepted referral, but failed to report to the employer, on 1,891 occasions; 337 reported to the employer but refused the job, on 342 occasions; and 173 accepted the job but failed to come to work, on 177 occasions.

4.0 *SES Policies*

4.1 *Identify each office of SES which is being used to process recipients of public assistance pursuant to the New York Work Rules.*

Answer:

Office Number	*Address*	*Type of Ref*
410	255 West 54 Street, NYC	Industrial—only
411	250 Schermerhorn Street, Brooklyn	Industrial—only
412	42-15 Crescent Street, LIC	Industrial only
420	247 West 54 Street, NYC	Hotel & Restaurant place only

Answer of Department of Labor to Plaintiffs' Interrogatories.

Office Number	*Address*	**Type of Referrals*
421	250 Schermerhorn Street, Brooklyn	Service industries—only
422	259 West 54 Street, NYC	Service personnel—only
431	247 West 54 Street, NYC	Household—only
433	534 Courtland Avenue, Bronx	Household—only
435	60 Bond Street, Brooklyn	Household—only
437	42-15 Crescent Street, LIC	Household—only
440	238 West 35 Street, NYC	Apparel—only
441	58 Bond Street, Brooklyn	Apparel—only
460	444 Madison Avenue, NYC	Professional—only
450	25 Hyatt Street, St. George, S. I.	
480	575 Lexington Avenue, NYC	Office personnel—only
481	175 Remsen Street, Brooklyn	Office personnel—only
490	16 East 42nd Street, NYC	Sales & Merchandising—only
462-WIN	1704 Second Avenue, NYC	
463-WIN	1366 Inwood Avenue, Bronx	
464-WIN	358 E. 149 Street, Bronx	
465-WIN	250 W. 90 Street, NYC	
466-WIN	58 Bond Street, Brooklyn	
467-WIN	1181 E. New York Avenue, Brooklyn	
468-WIN	42-15 Crescent Street, LIC	
469-WIN	45 West 36 Street, NYC	
459-WIN	23 East 26 Street, NYC	
495-WIN	44 Court Street, Brooklyn	
211-WIN	44 Chapel Street, Albany	
261-1-WIN	315 E. Main Street, Patchogue, L. I.	
805-YOC	95 Central Avenue, Albany	
110	449 Main Street, Catskill	
3	13 South Street, Glens Falls	
10	18 N. Sixth Street, Hudson	
12	16-18 Pine Grove Avenue, Kingston	
13	39 Academy Street, Poughkeepsie	
4	404 Broadway, Saratoga	
5	600 Franklin Street, Schenectady	
7	380 River Street, Troy	
14	41 Dolson Avenue, Middletown	
114	10 Sussex Street, Port Jervis	
17	280 Broadway, Newburgh	
113	451 Main Street, Beacon	
295	1 Liberty Street, Bath	
895-YOC	87-89 Chenango Street, Binghamton	

Answer of Department of Labor to Plaintiffs' Interrogatories

Office Number	*Address*	*Type of Referral*
94	345 Denison Parkway East, Corning	
96	200 Baldwin Street, Elmira	
95	20 Broadway, Hornell	
91	Babcock Hall, Terrace Hill, Ithaca	
99	3 Liberty Street, Monticello	
92	20 So. Broad Street, Norwich	
93	12 Dietz Street, Oneonta	
195	161 1/2 N. Main Street, Wellsville	
78	61 Lake Shore Drive, West, Dunkirk	
79	214 W. Third Street, Jamestown	
74	215 Walnut Street, Lockport	
73	1324 Pine Avenue, Niagara Falls	
879	306 West State Street, Olean	
75	34 Seymour Street, Tonawanda	
858	540 E. Main Street, Rochester	
57	140 N. Main Street, Albion	
54	18 State Street, Batavia	
156	270 So. Main Street, Canandaigua	
52	3 Chestnut Avenue, Dansville	
56	32 Castle Street, Geneva	
152	Village Bldg., 103 Main Street, Mt. Morris	
53	151 N. Main Street, Newark	
251-WIN	83 N. Clinton Avenue, Rochester	
153	6 E. Main Street, Sodus	
55	76 No. Main Street, Warsaw	
45	232 Genesee Street, Auburn	
46	21 Groton Avenue, Cortland	
44	72 So. First Street, Fulton	
48	595 Main Street, Oneida	
43	147 W. First Street, Oswego	
241-WIN	677 So. Salina Street, Syracuse	
840	677 So. Salina Street, Syracuse	
843-STEP	321 Erie Blvd. W., Syracuse	
42	119 Sherman Street, Watertown	
35	71 Guy Park Avenue, Amsterdam	
34	199 So. Main Street, Gloversville	
32	205 No. Main Street, Herkimer	
25	40 Catherine Street, Malone	

Answer of Department of Labor to Plaintiffs' Interrogatories.

Office Number	*Address*	**Type of Referrals*
22	35 Glen Street, Massena	
21	419 Ford Street, Ogdensburg	
26	10 Peru Street, Plattsburg	
30	405 W. Dominick Street, Rome	
27	9 St. Bernard Street, Saranac Lake	
221-WIN	247 Elizabeth Street, Utica	
820	276 Genesee Street, Utica	
885-YOC	9 So. First Avenue, Mt. Vernon	
281-WIN	145 No. Fifth Avenue, Mt. Vernon	
85	432 Main Street, New Rochelle	
87	50 Commerce Street, Spring Valley	
80	418 North Division Street, Peekskill	
82	23-25 So. Main Street, Port Chester	
880	300 Hamilton Avenue, White Plains	
83	70 Ashburton Avenue, Yonkers	
66	1730 Union Blvd., Bay Shore	
69	565 Willow Avenue, Cedarhurst	
64	84 No. Main Street, Freeport	
61	25 Glen Cove Avenue, Glen Cove	
161	330 Great Neck Road, Great Neck	
68	344 Fulton Avenue, Hempstead	
262-WIN	95 Jackson Street, Hempstead	
860	2 West Avenue, Hicksville	
65	25 Depot Road, Huntington Station	
867	293 E. Main Street, Patchogue	
261-WIN	315 E. Main Street, Patchogue	
63	945 W. Main Street, Riverhead	
163	117 Main Street, Bridgehampton	
876	295 Main Street, Buffalo	
271-WIN	523 Delaware Avenue, Buffalo	
874-WIN	1687 Main Street, Buffalo	

*Unless indicated otherwise, offices make referrals to all vocations.

4.2 *As to each office listed in 4.1, indicate whether said office normally refers individuals to work in all vocations. If said office normally refers individuals only to certain designated vocations, indicate which vocations.*

Answer: See answer to 4.1. Unless indicated otherwise, offices make referrals to all vocations.

4.3 *Set forth in detail the procedure followed in attempting to secure placement in a job for an individual voluntarily seeking employment through SES.*

Answer: Refer to enclosed New York State Employment Service Bureau Procedures Manual.* Procedure for referring individuals voluntarily seeking employment through SES to jobs is contained in Section 4000, "Selection, Referral and Verification." Special procedure for "Serving Veterans" is contained in Section 7000 and SES policy and procedure for processing discrimination cases are contained in Section 12000, "Equal Employment Opportunity."

4.4 *Set forth in detail the procedure followed in attempting to secure placement in a job for an individual referred to SES pursuant to the New York Work Rules. Specify any statutes, regulations, or written policies which set forth such procedures.*

Answer: Refer to enclosed New York State Employment Service Bureau Procedures Manual. Special procedure for serving recipients of public assistance is contained in section II 17090-17099, "Cooperation with the New York State Department of Social Services." Also refer to New York State Department of Social Services policies and procedures. Pertinent agreement between New York State Department of Social Services and New York State Department of Labor is enclosed.

4.5 *In attempting to secure jobs for persons whom it is serving, does SES follow any priorities as between:*

*Exhibits and attachments are omitted from printed Appendix.

Answer of Department of Labor to Plaintiffs' Interrogatories.

a. *Recipients of public assistance and recipients of unemployment compensation;*

Answer: SES does not follow any priorities in referral to jobs between recipients of public assistance and recipients of unemployment compensation.

b. *Persons referred pursuant to the New York Work Rules and persons in WIN.*

Specify any statutes, regulations or written or informal policies which set forth such priorities.

Answer: SES emphasizes referral to jobs for individuals receiving service pursuant to section 131.4 of the Social Services Law while persons in WIN are more likely to be referred to training to upgrade their skills before they are referred to a job. Refer to New York State Employment Service Procedures Manual, Section II 26500 for procedures for the Work Incentive Program.

4.6 *For each of the following general job classifications, from July 1, 1971 to date, state the total number of job opportunities to which referrals were made through the SES in New York State, and for each county of the State:*

a. *Apparel Industries*

b. *Hotel and Restaurant*

c. *Household*

d. *Industrial*

e. *Office (commercial)*

f. *Professional*

g. *Technical*

h. *Sales and Merchandising*

i. *Service*

j. *Agricultural*

Answer: Data by job classification and by county are not available. In July, 1971, SES received from employers notices of 63,157 job opportunities. In July 1971, 67,462 referrals were made to job openings in the State.

4.7 *With regard to job opportunities for each general job classification set forth in 4.6 indicate the total number of opportunities for jobs which pay:*

a. *From $ .50 to $1.00 per hour;*

b. *From $1.00 to $1.50 per hour;*

c. *From $1.50 to $2.00 per hour;*

d. *From $2.00 to $2.50 per hour;*

e. *From $2.50 to $3.00 per hour;*

f. *From $3.00 to $3.50 per hour;*

g. *From $3.50 to $4.50 per hour;*

h. *From $4.50 to $5.00 per hour;*

i. *More than $5.00 per hour.*

Answer: The requested information is not available.

4.8 *With regard to the job opportunities set forth in 4.6, state the total number of jobs filled in New York State, and for each county of the State, since July 1, 1971:*

a. *In each general job classification set forth in 4.6;*

b. *At each pay level set forth in 4.7.*

Answer of Department of Labor to Plaintiffs' Interrogatories.

Answer: Data by job classification, by pay level, and by county are not available. In July, 1971, SES filled 24,167 jobs (some individuals held more than one job in that month).

4.9 *State the total number of "employable" recipients of public assistance referred for employment, since July 1, 1971:*

a. *In each general job classification in 4.6.*

b. *At each pay level set forth in 4.7.*

Answer: Data by job classification and by pay level are not available. In July, 1971, 12,648 employable public assistance recipients were referred to employers for employment.

4.10 *State the total number of "employable" recipients of public assistance who have been placed in jobs since July 1, 1971:*

a. *In each general job classification set forth in 4.6;*

b. *At each pay level set forth in 4.7.*

Answer: Data by job classification and by pay level are not available. In July, 1971, 1,537 employable public assistance recipients were placed in jobs.

4.11 *Describe in detail the procedures by which a recipient is apprised of a job offer under the New York Work Rules. In particular, state:*

a. *What procedure is used to determine what employment opportunities are available in the community;*

b. *Whether there are any standards or procedures used to determine the suitability of the employer, the type of em-*

ployment and the conditions of employment for referrals to private employment under the New York Rules;

Answer: Procedures for determining what employment opportunities are available in the community, the conditions of employment, etc. are contained in the Employment Service Bureau Procedures Manual, Section 3000, "Order Taking and Job Solicitation," Section 4000, "Selection, Referral and Verification" and Section 17090-17094, "Cooperation with New York State Department of Social Services".

c. *What explanation, if any, is given to a recipient, before the time he is informed of a job offer, of that recipient's rights and obligations for continued assistance;*

Answer: Employable public assistance recipients are required to attend an orientation session on their first visit to SES. During this session they are apprised of their rights and responsibilities under the new law. See Employment Service Bureau Procedures Manual, Section 17094, p. 4. In addition, they receive the brochure, "Facts for Public Assistance Recipients" (copy enclosed).

d. *Whether a recipient of ADC or ADC-U is expressly informed of and/or is actually given an opportunity to volunteer for WIN as an alternative to employment offered pursuant to the New York Work Rules.*

Answer: The Employment Service Bureau Procedures Manual states in Section 26525, "The determination that a welfare recipient is appropriate for referral to WIN is the responsibility of the local social services agency.".

Answer of Department of Labor to Plaintiffs' Interrogatories.

5.0 *Referrals Under WIN*

5.1 *Set forth the total number of WIN participants in New York State and in each district, county or city in which there is a WIN program, who have been referred to employment in the regular economy as mandated by 42 U. S. C. § 630 (1).*

Answer: The total number of participants referred is not known. However, in July, 1971, 430 WIN participants were referred to employment as mandated by the Social Security Act and placed in employment, as follows:

WIN Installation	*Number*
Albany (Albany, Rensselaer, Schenectady Counties)	35
New York City	158
Erie County	47
Monroe County	7
Nassau County	11
Niagara County	32
Oneida County	36
Onondaga County	47
Suffolk County	37
Westchester County	20

5.2 *Set forth the number of WIN participants referred to in 5.1 who have been referred for employment:*

a. *In each of the general job classifications set forth in 4.6:*

Answer: The following occupational breakdown is available:

Occupational Category	*Number*
Professional, Technical and Managerial	52
Clerical and Sales	128
Service	116
Farming, Fishery, and Forestry	1
Processing	7
Machine Trades	28
Bench Work	16
Structural Work	20
Miscellaneous Occupations	62

b. *At each of the wage levels set forth in 4.7:*

Answer: The following wage-level breakdown is available:

Wage Level Category	*Number*
Total	430
Less than $1.85*	37
$1.85-1.99	82
2.00-2.49	132
2.50-2.99	98
3.00-3.49	44
3.50-3.99	17
4.00 and over	20

*Includes non-monetary compensation and base pay jobs with commissions.

5.3 *Set forth the total number of WIN participants in New York State and in each district, county, or city in which there is a WIN program, who have been referred to training for work in the regular economy as mandated by 42 U. S. C. § 630 (2).*

Answer of Department of Labor to Plaintiffs' Interrogatories.

Answer: The total number of participants referred to training is not known. However, in July, 1971, the count of WIN participants referred to, and enrolled in, training, was as follows:

WIN Installation	*Number*
Albany (Albany, Rensselaer, Schenectady Counties)	18
New York City	365
Erie County	82
Monroe County	4
Nassau County	22
Niagara County	19
Oneida County	12
Onondaga County	21
Suffolk County	20
Westchester County	53
State total	616

5.4 Set forth the number of WIN participants referred to in 5.3 who have been referred to training:

a. *In each of the general job classifications set forth in 4.6:*

Answer: The occupational pattern of the 616 enrollees is as follows:

Occupational Category	*Number*
Professional, Technical and Managerial	152
Clerical and Sales	256
Service	66
Farming, Fishery, and Forestry	—
Processing	1
Machine Trades	64

Occupational Category	*Number*
Bench Work	21
Structural Work	35
Miscellaneous Occupations	21
Total	616

b. *At each of the wage levels set forth in 4.7.*

Not available.

5.5 *Set forth the total number of WIN participants in New York State and in each district, county or city in which there is a WIN program, who have been referred for participation in special work projects, as mandated by 42 U. S. C. § 630 (3).*

Answer: None.

5.6 *Set forth the number of WIN participants referred to in 5.5 who have been referred for participation in special work projects:*

a. *In each of the general job classifications set forth in 4.6.*

Answer: None.

b. *At each of the wage levels set forth in 4.7.*

Answer: None.

LOUIS L. LEVINE,
Industrial Commissioner.

Sworn to before me
this thirteenth day of September, 1971.
Judd D. Grey,
Notary Public, Saro. Co.
46-1568775—3/30/74.

Letter Dated November 11, 1971.

STATE OF NEW YORK
Department of Labor
State Office Building Campus
Albany, N. Y. 12226

November 11, 1971

(Seal)

Judd D. Grey
Deputy Industrial Commissioner
For Legal Affairs

Mrs. Jean Coon
Office of Attorney General
State Capitol
Albany, New York

Re: Dublino v. Wyman

Dear Jean:

In response to the question raised by the plaintiff's attorneys, listed below are the question numbers in the original and supplemental interrogatories to which our responses contained statistical data and an indication as to whether the statistical data relates to persons or transactions.

Question

3.2 — Welfare Checks

3.3* — Welfare Checks

3.4a — Transactions

3.4b* — Persons

3.4d — Persons and Transactions (occasions)

4.6 — Transactions

4.8** — Transactions

4.9 — Persons

4.10** — Persons

5.1 — Persons

5.2 — Persons

5.3 — Persons

5.4 — Persons .

---

*Refer to reply dated October 19, 1971.

**For the reply dated October 19, 1971 on reports MA 7-18 and MA 7-18C data relates to persons.

In addition, supplemental material consisting of statistical data which was submitted to you relates to persons or transactions as follows:

1. Research Bulletin (1971) No. 2.

a. Table 1—Transactions

b. Table 2—Transactions

c. Table 3—Transactions

d. Table 4—Persons

e. Table 5—Persons

f. Table 6—Persons

g. Table 7—Persons

Letter Dated November 11, 1971.

h. Table 8—Persons

i. Table 9—Persons

2. *Operations*, April 1, 1971.

a. Table 1—Persons

b. Table 2*—Transactions and Persons

c. Table 3**—Persons

d. Table 4**—Persons

e. Table 6A***—Transactions (except initial certification data which relates to persons)

Table 6B***—Persons

---

*Individual counted once for each placement.
**Individual counted once for each type of service given.
***Excludes WIN participants. Refer to pp. 55-61. All data relates to persons.

3. Working Paper 1971—No. 12.

a. Table 1—Transactions

b. Table 2—Transactions

c. Table 3—Persons

d. Table 4—Persons

e. Table 5—Persons

f. Table 6—Persons

The collection of information as to job classifications and salaries mentioned in your letter will be in relation to placements and *not* referrals under this program as you stated. This is in accordance with our written reply to question 4.10 on October 19, 1971. The report will be

available on the 25th of the month following the month being reported.

Sincerely,

JUDD D. GREY,

Judd D. Grey,

Deputy Industrial Commissioner for Legal Affairs.

JDG:AWS

CC Commissioner Levine
Commissioner Dunn

Memorandum

STATE OF NEW YORK

Department of Labor

Division of Employment

(Seal)

State Office Building Campus

Albany, New York 12201

Public Employment Service
(Seal)
Service for Everyone
Local . State . National

December 20, 1971

MEMORANDUM TO: Commissioner Judd Grey

Re: Dublino vs. Wyman
Mrs. Coon's letter to you dated
December 15, 1971

The following are the questions raised by the plaintiffs and our answers.

Memorandum.

1. *Question: What is Form ES-20 and can we have a copy?*

Answer: Form ES-20 is referred to in the Employment Service Bureau Procedures Manual, Section 17098, paragraph B. As it states: "Selected characteristics of applicants returned to Social Services as unemployable will be reported on ES 20 report form".

Copies of the procedure, including facsimiles of the ES-20, as issued 7/1/71 (white) and revised 11/22/71 (pink) are attached. The procedure and form were revised to use more accurate terminology by substituting "claiming unemployable status" and "applicant claims inability to work" for "unemployable".

2. *Question: In the tables provided by your Department, there is a table MA7-18c which shows social services registrant placements. There is also a table MA 7-18, does that include social services registrants?*

Answer: Yes. Table MA 7-18c contains placement data only for social services registrants while Table MA 7-18 is for all registrants including social services registrants.

3. *Question: There is a disparity between placement figures provided by Social Services and your Department. The Labor Department figures show 5,812 persons placed in last regular job. Does that mean that, if a registrant is placed in more than one job during the reporting period, only the last placement is counted for reporting purposes?*

Answer: Yes. The figure of 5,812 appears in the Table MA 7-18c which is prepared quarterly. If a registrant is placed in more than one job during the specific quarterly period, only the last placement is counted for reporting purposes.

The Social Services figure is a monthly statistic. While the statistics from Social Services may take into account a recipient placed more than once during a given month, they do not distinguish recipients placed more than once in a quarterly period when the placements occur in different months. In addition, allowance should be made for differences in time lag in the reporting systems.

As requested we are providing copies of the joint report by the Departments of Social Services and Labor for October to the Governor.

WILLIAM L. O'TOOL,
Deputy Executive Director.

Attachment

Answer of Erie County to Plaintiffs' Interrogatories.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted in Printing.)

George G. Sipprell, for his reply to the numbered interrogatories herein set forth, replies.

2.0 General

2.1 Set forth the correct name and address for each named Defendant and set forth the correct job title for each official who is named Defendant.

George G. Sipprell, Commissioner of the Erie County Department of Social Services, with offices at 95 Franklin Street, Buffalo, New York.

2.2 Briefly describe the job and duties of the named Defendants. In particular, state the statutory provisions, regulations or written statements which set forth their duties and responsibilities.

Formulates, in conjunction with principal deputies, basic policies, standards, and program objectives, and recommends to Board of Social Welfare for final approval.

Directs through subordinates and administrative operation of the Department.

Appoints members of the Departmental staff, certifies staff payrolls, and submits annual budget to the Board of Social Welfare for approval.

Consults with the Erie County Legislature, Comptroller, County Attorney, and other department heads in matters relating to Social Welfare in the County and the administration of the Department.

Maintains good public relations through contacts with private welfare agencies, the State Department of Social Services, American Public Welfare Association, Chamber of Commerce and other private, governmental organizations, and civic groups.

Serves as Chief Administrative and Executive Officer for Board of Social Welfare.

Enforces and applies as the same relates to all Erie County Public Assistance recipients, all provisions of the Social Welfare Law of the State of New York, All Regulations, Bulletins, Administrative Letters and other mandates, promulgated by the State Department of Social Services.

2.3 Set forth the names, addresses and official positions of any employees of DSS who are not named Defendants and who have policy-making authority in the area of promulgating and implementing regulations on HR, VA, ADC, ADC-U, OAA, APTD, and AB eligibility and administration and indicate as to each such employee, the scope of such authority.

Defendant George G. Sipprell has no knowledge or information available to him to answer this question.

2.4 State whether the persons named in response to 2.3, if any, act under the direction and/or control of any of the named Defendants. Indicate which of the named Defendants possesses such authority.

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.5 Briefly describe the procedure for promulgating regulations for the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs. In particular state:

a. What official or officials may initiate changes in the New York State Plans and/or in any other regulations relating to the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs; what official, officials or body must approve a regulation for it to become effective;

b. What chronological procedural steps beginning with the source of an initial proposal are taken to promulgate such regulations;

c. Identify the individuals responsible for drafting such regulations;

d. As to regulations concerning ADC, ADC-U, OAA, APTD, and AB whether any written or other expressed approval of the Department of Health, Education and Welfare is solicited and/or obtained prior to the promulgation of such regulations;

e. Whether the expressed approval referred to in 2.5 (d) is solicited and/or obtained after such changes have become effective.

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.6 State briefly the facts surrounding the submission and approval of the New York State Plans. In particular, state:

a. What was the last date that New York submitted each of the New York State Plans for approval by the Secretary of HEW;

b. Whether the Secretary of HEW or his agents have ever withheld approval, questioned the compliance or otherwise indicated disapproval of any or all provisions of any of the New York State Plans.

c. Whether the New York Work Rules have been submitted for approval as part of the New York State Plans; if the answer is affirmative, specify the date of such submission and the action taken by the Secretary of HEW;

d. Whether the New York State Plans have ever been the subject of full review by the Secretary of HEW. Specify the date, issues and outcome of such reviews,

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.7 Identify each written communication, including any letters, notices, evaluations, reports or orders by the Secretary of HEW or his agents and agents of DSS or the County Department which is in any way related to the New York Work Rules. Identify all documents relating to the provisions or administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs prepared by private or governmental evaluators, administrators, or analysts if such documents were prepared at the request of and/or were financed in whole or in part by public officials either state or federal and are in any way related to the New York Work Rules. Please attach a copy of each document identified in response to this interrogatory as part of the Answer to this Interrogatory.

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.8 Identify each oral communication between employees of DSS or the County Department and HEW which is in any way related to the New York Work Rules and give:

a. the date of such communication;

b. the name of each participant in such communication.

There have never been any oral communications between employees of the County Department, and HEW.

3.0 *New York Work Rules—Origins and Authority*

3.1 How long has New York had a statute and/or regulations disqualifying recipients from receiving public assistance for refusal to accept a job referral?

Section 131 subd. 4 of the New York State Social Services has been enforced by the local Agency, since its effective date, April 22, 1959.

3.2 Describe in specific detail the circumstances of the enactment and promulgation of the New York Work Rules. In particular:

a. At the time when the legislation which ultimately *became §§131(4),* 164 and 350-k was pending before the New York Legislature, did any of the named Defendants or their agents communicate with the office of the Governor of the State of New York concerning said legislation:

b. Identify each such communication, including any letters, memoranda, or reports, referred to in 3.2(a). Please attach a copy each of such written communication as a part of the response to this Interrogatory. As to each such oral communication set forth:

(1) the date on which it occurred;

(2) the name of each participant.

c. Identify each person who is responsible for liason between the offices of the Governor of the State of New York and the New York State Department of Social Services and give each such person's official title.

Defendant, George G. Sipprell, has no knowledge or information available to him to answer this question.

3.3 Describe in detail the coverage of the New York Work Rules. Include a statement indicating whether any Department policy or regulation beyond those set forth in Letters No. 34, No. 43, No. 48 and No. 52 is utilized in determining the appropriateness of HR, VA, ADC, ADC-U, AA, APTD, and AB recipients or applicants for referral under §§131(4), 164, and 350-k. Give full citations or attach copies of all authorities so utilized.

Defendant, George G. Sipprell, has no knowledge or information available to him to answer this question.

4.1 Since July 1, 1971, for each of the following categories of assistance state the number of recipients of assistance in each such category who have been sent a letter notifying them that they are "employable" under the New York Work Rules and requiring said recipients to report to an office of the State Employment Service ("SES"):

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A categorical breakdown of items (a) thru (g) inclusive is not available to the Agency. The total of categories to whom letters were sent for the month of July was 7,015.

4.2 Of the total number of recipients referred to in 4.2 state, for each of the following categories, the total number of recipients who, subsequent to the sending of the letter referred to in 4.1, have been reclassified as "unemployable" under the New York Work Rules:

a. HR 625

b. VA 0

c. ADC 549

d. ADC-U 107

c. OAA 0

f. APTD 0

g. AB 0

4.3 As to the recipients referred to in 4.2, stated by category the total number of recipients rendered "unemployable" by:

a. "illness or significant and substantial incapacity, either mental or physical;"—960

b. "advanced age,"—none

c. "full-time satisfactory participation in an approved program of vocational training or rehabilitation:"—unavailable

d. "the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated . . . and for whom required care is not otherwise reasonable available notwithstanding dilligent efforts for such person to provide others to provide such care:"—unavailable

e. "the need of such person to provide full-time care for other members of such person's household . . . who are children and for whom required care is not otherwise reasonable available notwithstanding dilligent efforts for such person to provide others to provide such care."—321

4.4 Since July 1, 1971, for each of the following categories of assistance state the number of recipients of assistance in each such category who have been sent letters requiring them to report to an SES office because they are full-time participants in approved program of vocational training and rehabilitation:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A categorical breakdown of items (a.) thru (g.) is not available to the Agency. The total of all such categories is approximately 400.

4.5 State separately the number of recipients, who are participants in the WIN program, referred to in:

a. 4.4 (c)

b. 4.4 (d)

c. categorical breakdown of items (a.) and (b.) is not available, to the Agency. The total of items (a.) and (b.) is 1,400.

4.6 For each semi-monthly reporting period since July 1, 1971 and for each of the following categories state the number of persons who have been required to report to an SES office to pick up public assistance checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

	ADC	*ADC-U*	*HR*	*VA*
7/1	3,006	597	3002	None
7/16	423	144	2452	None
8/1	2,439	316	2864	None
8/16	2,039	266	2585	None
9/1	1,900	263	1790	None

4.7 For each semi-monthly reporting period and for each of the following categories, state the number of recipients referred to in 4.6 who failed to report to the designated SES office:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

	ADC	*ADC-U*	*HR*	*Total*
7/1	233	62	357	652
7/16	33	15	353	401
8/1	162	27	333	522
8/16	170	26	362	558
9/1	282	40	286	608

4.8 For each of the categories of recipients and for each of the periods referred to in 4.7, state the number of recipients who failed to report to the designated SES office because:

a. they did not understand how the new system worked:

b. they wished to cancel their support rather than submit to the new system:

c. they disagreed with their classification as employable and were demanding hearings on their status.

a. —none

b. —83

c. —for the month of August, 1971—263.

4.9 State the total number of recipients for each of the following categories, whose public assistance has been terminated for failure to report to an office of SES to pick up their checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

a. —204

b. —0

c. —65

d. —7

e. —0

f. —0

g. —0

4.10 As to each category of public assistance (HR, VA, ADC, ADC-U, OAA, APTD and AB) state the total number of recipients of public assistance whose assistance has been terminated for each of the following reasons:

a. Failure to obtain and file with the social service district at least once in every two-week period a statement that no employment is available;

b. Willful failure to report for an interview at an employment office with respect to employment when requested to do so by such office;

c. Willful failure to report to such office the result of a referral to employment;

d. Willful failure to report to employment.

4.10

a. None

b. None

c. None

d. None

4.11 Set forth in detail the procedure followed by a local Social Service Department in evaluating the availability of recipients for employment, and culminating in the sending of a letter to the recipient notifying him that he has been classified as "employable".

The Caseworker interviews the client and determines whether he is employable in relation to the guidelines in 71 PWD-43, Page 4 "Definition of Employable".

4.12 Set forth the number of recipients of ADC and ADC-U terminated because of failure to exercise due diligence in search of child-care.

No statistics available.

4.13 Set forth in detail the procedure followed when a recipient of public assistance who has been declared "employable" contests said finding of "employability".

Procedure when a client is delcared "unemployable" as a result of information furnished to the NYSES when he reports for service and check pick-up:

1. Upon return of the ES-28 (report from the NYSES to ECDSS) the Accounting Division is notified and the next check placed on mail.

2. The ES-28 is reviewed in the Agency Medical Division. If medical substantiation is available it is forwarded to the caseworker to enable him to remove the client from employable status.

3. If no medical verification is available, a 7-day notice (91-B) is mailed to the client. This includes a notification of his right to a Fair Hearing. If the client takes no further action, he is considered in non-compliance and steps taken to close the case.

If, however, the client notified the caseworker that he is still unable to work, he is told that it is his responsibility to obtain medical verification. If for practical reasons he is unable to obtain this verification prior to the date of his next check, and can produce evidence that he had begun the

procedure to obtain such verification, then no action is taken until the verification is received. An attempt is made to finalize the termination within 30 days.

4.14 If a hearing is provided to recipients on the issue of their "employability", state for each of the following categories the number of said hearings provided to recipients since July 1, 1971:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

Categorical breakdown not available.

4.15 List in detail any public appropriations or expenditures specifically for the implementation of the New York Work Rules. State what portion of such monies, if any, are utilized for

a. educational training—none

b. day-care facilities—none

c. job development—none

d. job counseling—none

4.16 State what notice, if any, is given to a recipient of his right to contest his classification as "employable" under the New York Work Rules.

If a client feels he is unemployable he is given a seven-day notice which indicates his right to contest his classification with his caseworker and/or the caseworker's supervisor. This notice also includes his right to request a fair hearing through the State Department of Social Services.

4.17 Are public assistance recipients referred for employment under the New York Work Rules by an employee of a DSS? Is this policy state-wide? If not, list any social services district, county or city in which such referrals are made by Social Services employees.

In Erie County referrals for employment under the New York Work Rules are made by SES. The social service employment counsellors do make referrals for employment under long standing rules of the department itself.

4.18 Describe in detail the procedures by which a recipient is apprised of a job offer under the New York Work Rules. In particular, state:

4.18a What procedure is used to determine what employment opportunities are available in the community?

This is a prerogative of the New York State Employment Service.

4.18b What standards are used to determine the suitability of the employer, the type of employment and the conditions of employment for referrals to private employment under the New York Work Rules.

This is a prerogative of the New York State Employment Service.

418c What explanation of what he must do, if any, is given to a recipient at the time he is infomred of a job offer.

This is a prerogative of the New York State Employment.

4.18d Whether a recipient of ADC or ADC-U is expressly informed of the existence of WIN prior to being referred to employment offered pursuant to the New York Work Rules;

This is a prerogative of the New York State Employment.

4.18e Whether a recipient of ADC or ADC-U is given an opportunity to volunteer for WIN prior to being referred to employment offered pursuant to the New York Work Rules;

This is a prerogative of the New York State Employment Service.

4.18f At what point a termination of grant payments under the New York Work Rules takes effect when a recipient refused to accept the job;

When a recipient refused to accept a job a seven-day notice is sent to the recipient indicating a termination of grant payments unless he can establish the refusal as being with good cause. If good cause is not established the termination of grant payments becomes effective when the next check is due.

4.18g Whether a recipient terminated under the New York Work Rules pursuant to §131 (4) is afforded the opportunity of an evidentiary hearing prior to the effective date of termination of benefits: If so, explain the policy mandating such hearing or, if such policy is written, attach a copy of any written policy mandating such a hearing;

When a recipient refused to accept a job a seven-day notice is sent to the recipient indicating a termination of grant payments unless he can establish the refusal as being with good cause. If good cause is not established the ter-

mination of grant payments become effective when the nex check is due.

Attached is Bulletin 128 from the New York State Depart ment of Social Services.

4.18h Whether any additional persuasive efforts such as counseling are actually given a recipient declining to accep a job referral under the New York work Rules after an initial refusal to accept an offered job;

Only if the recipient reapplies for assistance at the end of the 30-day period of suspension or termination of grant.

4.18i When may a recipient, whose assistance is ter- minated pursuant to the New York Work Rules, reapply for public assistance; Specify all the conditions or qualifications for acceptance of such application and specify the statutes, regulations or written policy which sets forth such con- ditions or qualifications.

A recipient may reapply for public assistance 30 days after termination of grant. If the recipient meets all ordinary eligibility standards he must agree in writing to comply with New York Work Rules. These regulations are contained in Administrative Letter 71 PWD-43, attached hereto.

4.19 Describe in detail the procedures used to determine the availability and suitability of child care for employable individuals.

See attached Bulletin No. 93 New York State Department of Social Services.

4.20 Describe in detail the procedure and standards used to determine whether an employable individual for whom suitable child care services are available, should be referred to the WIN program or to other employment programs or

opportunities. In particular state whether there are any statutes, regulations, or written policy statements which set forth the criteria or standards to be used in such determinations.

See attached Bulletin No. 93 New York State Department of Social Services.

4.21 Identify each report received from county of city Social Services departments pursuant to the requirements of §G of Administrative Letter No. 43 (pp. 17-19). Please attach a copy of each such report as part of the response to this Interrogatory.

No reports available.

5.1 For each of the following categories, state the total number of employable recipients of public assistance who have been referred to public works projects pursuant to §§164 and 350-k of the New York Work rules:

a. HR 761

b. VA 0

c. ADC 0

d. ADC-U 0

e. OAA 0

f. APTD 0

g. AB 0

5.2 As to each public works project created pursuant to the New York Work Rules state the number of jobs provided in each of the following categories described in Letter No. 48:

a. Projects to maintain or develop adequate work habits; 21

b. Projects to maintain and improve existing skills; 21

c. Projects to develop new skills; 0

d. Projects of special interest to the local government 21

5.3 Identify each report received to date from county or city Social Services departments pursuant to the requirements of SF of Administrative Letter No. 48 (pp. 8-10). Please attach a copy of each such report as a part of the response to this Interrogatory.

No reports available on a County level.

6.0 *Work Incentive Program*—WIN

Where questions in the following group of interrogatories ask for total figures for the State of New York, Plaintiffs also request a county-by county breakdown of all such total figures.

No reports available on a County level.

6.1 State what Social Services districts, counties and/or cities in New York have been determined by the Secretary of Labor to be appropriate for the WIN program and the date of each Social Services district, county, or city was so designated. List for each of these Social Services districts, counties or cities, the number of authorized WIN openings or slots for each year of the WIN program.

No reports available on the County level.

6.2 State the annual average level of utilization of these openings or slots for each district, county or city where openings were authorized for such districts, counties or cities.

No reports available on the County level.

6.3 State the total number of ADC and ADC-U recipients who have been voluntarily referred to WIN in the State of New York for each year since inception of the WIN program.

No reports available on County level.

6.4 State the total number of ADC and ADC-U recipients who have volunteered for WIN in the State of New York for each year since the inception of the WIN program.

No reports available in County level.

6.5 List in detail the priorities utilized, if any, in determining what recipients will be referred to the WIN program.

Attached is Bulletin 93 from the State Dept. of Social Services which lists in detail the priorities utilized in determining what recipients will be referred to the WIN Program.

6.6 List the total referrals, if any, of ADC recipients who are mothers of preschool age children for the State of New York for each year since the inception of the WIN program.

No reports available on County level.

6.7 State the total, if any, of ADC recipients who are mothers of pre-school children who have volunteered for enrollment in WIN in the State of New York.

No reports available on County level.

6.8 State whether day-care arrangements approved under state standards are made available to volunteers or referees under the WIN program. State how many slots in day care centers are actually available to ADC recipients in the State of New York.

No reports available on County level.

6.9 State the total number of ADC and ADC-U recipients whose assistance has been terminated for each of the following reasons:

a. Refusal to accept referral to WIN;

b. Refusal to accept training or employment under WIN;

c. Refusal to accept 60 days of counseling prior to termination under WIN.

No reports available on County level.

7.0 *Job Type*

7.1 Indicate the total number of

a. public works jobs

b. jobs in the regular economy to which recipients have been referred pursuant to the New York Work Rules and, as to each such total indicate how many of such jobs are classified in each of the following categories:

a. Apparel Industries

b. Hotel and Restaurant

c. Household

d. Industrial

e. Office (Commercial)

f. Professional

g. Technical

h. Service

j. Agricultural

No reports available on County level.

7.2 Indicate the number of public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are classified in each of the categories set forth in 7.1.

The Erie County Department of Social Services has participated in the Work Relief Projects in accordance with the State Work Rules and has participated in projects set forth as follows:

Please refer to the following sheet.

10-1-71

WORK RELIEF PROJECTS

Project	*Order*	*Slots*	*Filled*	*Pending*
Village of Blasdell	6	12	0	12
Clarence Central Schools	5	10	0	10
Bd. of Education (City Tonawanda)	11	22	0	22
Lake Shore Central Schools	6	12	10	2
Erie Comm. College	8	16	0	16
Urban Center	20	40	21	19
Lancaster Central School Dist.	4	8	0	8
Depew Public Schools	(12 male	24)	0	24
	(9	18)	0	18
Eden Central School Dist.	20	40	2	38
Hamburg Central Schools	6	12	0	12
Vill. of Hamburg—Dept. Public Works	Unlimited		0	
East Jr. H. S., West Seneca	6	12	12	0
Food Stamp Office	3	9	9	0
Receptionist Program	5	10	10	0
Parks	60	120	120	0
Auto Bureau	6	12	12	0
Central Records	10	20	20	0
Civil Defense	5	10	10	0

Date	Project	Order	Slots	Filled
7/71	Comptroller (old order)	1	1	1
7/71	Printing Office	7	14	14
7/71	Board of Elections (old order)	1	2	2
7/71	Comptroller's Office (old order)	1	2	2
8/16	Health Dept.—Education	3	9	9
7/71	Mail Room	4	8	8
7/71	Health Dept.—Stores	3	6	6
7/71	E. J. Meyer Hospital (old order)	3	6	6
8/71	Photostating Div.	4	8	6
7/71	Air Pollution	1	2	2
9/71	Accounting	10	20	10
9/71	Mr. Gleason (Rm. 783)	35	70	30
9/27	ECHJ—Verbal	(20 female)		
		(15 male)	70	2
			625	324
9/27	ECH&I	(8 female 3 men)		
9/30	Mail Room	1 clerical		
		2 College caliber		
		4 male		

7.3 Indicate the number of public works projects jobs to which recipients have been referred which pay:

7.4 Indicate the number of jobs in the regular economy in each salary catergory set out in 7.3 to which recipients have been referred pursuant to the New York Work Rules.

No report available on County level.

7.5 Indicate the number of jobs in public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are in each of the salary categories set forth in 7.3.

a. From $.50 to $1.00 per hour 0

b. From $1.00 to $1.50 per hour 0

c. From $1.50 to $2.00 per hour 0

d. From $2.00 to $2.50 per hour 0

e. From $2.50 to $3.00 per hour 0

f. From $3.00 to $3.50 per hour 0

g. From $3.50 to $4.00 per hour 0

h. From $4.00 to $4.50 per hour 0

i. More than $5.00 per hour 0

8.0 *Individual Recipients*

Identify specifically and attach copies of all documents in the possession of state or local welfare departments relating to the cases of the following individuals. Include in this request copies of all notices to the clients, or letters or communications concerning fair hearings or appeals to the State Department of Social Services, or hearing officers reports, all notes or other documentary records of official actions, all narrative reports prepared by the case workers, and any other written material prepared by or available to the named Defendants that relate to the eligibility of the following recipients:

a. Dolores Dublino, 15th Street, Buffalo, New York;

b. Doris Jimerson, P. O. Box 53, Lantens, New York 14091;

Date	*Project*	*Order*	*Slots*	*Filled*
7/71	Comptroller (old order)	1	1	1
7/71	Printing Office	7	14	14
7/71	Board of Elections (old order)	1	2	2
7/71	Comptroller's Office (old order)	1	2	2
8/16	Health Dept.—Education	3	9	9
7/71	Mail Room	4	8	8
7/71	Health Dept.—Stores	3	6	6
7/71	E. J. Meyer Hospital (old order)	3	6	6
8/71	Photostating Div.	4	8	6
7/71	Air Pollution	1	2	2
9/71	Accounting	10	20	10
9/71	Mr. Gleason (Rm. 783)	35	70	30
9/27	ECHJ—Verbal	(20 female) (15 male)	70	2
			625	324
9/27	ECH&I	(8 female 3 men)		
9/30	Mail Room	1 clerical 2 College caliber 4 male		

7.3 Indicate the number of public works projects jobs to which recipients have been referred which pay:

7.4 Indicate the number of jobs in the regular economy in each salary catergory set out in 7.3 to which recipients have been referred pursuant to the New York Work Rules.

No report available on County level.

7.5 Indicate the number of jobs in public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are in each of the salary categories set forth in 7.3.

a. From $.50 to $1.00 per hour 0

b. From $1.00 to $1.50 per hour 0

c. From $1.50 to $2.00 per hour 0

d. From $2.00 to $2.50 per hour 0

e. From $2.50 to $3.00 per hour 0

f. From $3.00 to $3.50 per hour 0

g. From $3.50 to $4.00 per hour 0

h. From $4.00 to $4.50 per hour 0

i. More than $5.00 per hour 0

8.0 *Individual Recipients*

Identify specifically and attach copies of all documents in the possession of state or local welfare departments relating to the cases of the following individuals. Include in this request copies of all notices to the clients, or letters or communications concerning fair hearings or appeals to the State Department of Social Services, or hearing officers reports, all notes or other documentary records of official actions, all narrative reports prepared by the case workers, and any other written material prepared by or available to the named Defendants that relate to the eligibility of the following recipients:

a. Dolores Dublino, 15th Street, Buffalo, New York;

b. Doris Jimerson, P. O. Box 53, Lantens, New York 14091;

c. Virginia Michael, Elvira Michael, Norma Michael, 3056 Wende Road, Alden, New York;

d. Janie Lee Phillips, 823 Virginia Street, Buffalo New York;

e. Maria Marfoglia, 418 Busti Street, Buffalo, New York;

f. Henrietta Hunter, 97 Norwood Street, Buffalo New York;

g. Mrs. Ollie Swanson, 242 Orange Street, Buffalo New York.

Photostatic copies of the entire records of Erie County Plaintiffs have been previously hand delivered to Michael A O'Connor of the Legal Aid Bureau of Buffalo, Inc., Neighborhood Legal Services, 481 Swan Street, Buffalo, New York.

Respectfully submitted,

ROBERT E. CASEY, JR.,
County Attorney,
Office and P. O. Address,
(7th Floor—25 Delaware Avenue)
Buffalo, New York.

MARIO C. GAMBACORTA,
Supervising Counsel, of counsel,
Attorney for Defendants.

Order of August 1, 1972.

Opinion of the Court
Dated July 28, 1972.

[printed in full in Appendix to Jurisdictional statement of State appellants]

Order of August 1, 1972.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted In Printing.)

Sir:

Take notice of an Order, of which the within is a copy, duly granted in the within entitled action on the 1st day of August, 1972, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 1st day of August, 1972.

Dated: Buffalo, New York, August 1, 1972

JOHN K. ADAMS,
Clerk, U. S. District Court,
U. S. Courthouse,
Buffalo, New York 14202.

To:

Michael A. O'Connor, Esq.,
Mayer G. Freed, Esq.,
Attorneys for Plaintiffs.

To:

Jean M. Coon, Esq.,
Attorney for Defendants N. Y. S.

To:

Leonard C. Koldin, Esq.,
Attorney for Defendant-Intervenors.

To:

Gregory Stamm, Esq.,
Attorney for Defendant Erie County.

FEDERAL RULES OF CIVIL PROCEDURE 77 (d).

The penultimate paragraph of the opinion of the three-judge court is amended to read as follows:

> Counsel for plaintiffs are directed to prepare an order of judgment and submit it to the court, upon notice to counsel for defendants, within ten days of the date of this order.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: August 1, 1972

Order and Judgment dated August 25, 1972.

[printed in full in Appendix to Jurisdictional statement of State appellants.]

Motion to Amend Order.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York
(Title Omitted In Printing.)

Pursuant to Rule 59 (e) of the Federal Rules of Civil Procedure, Plaintiffs move this Court to amend its Order herein, entered on August 25, 1972, to incorporate in said Order the provisions of Plaintiffs' Proposed Order (submitted August 7, 1972; filed August 30, 1972) and Proposed Amendment to Proposed Order (filed August 28, 1972), except that, with respect to costs and attorneys fees, paragraph 5 of this Court's Order herein shall remain unchanged.

Respectfully submitted,

LEGAL AID BUREAU OF
BUFFALO, INC.,
NEIGHBORHOOD LEGAL
SERVICES,
Michael A. O'Connor,
of Counsel,
481 Swan Street,
Buffalo, New York 14204
(716) 853-2850.

/s/ DENNIS R. YEAGER,
Mayer G. Freed,
423 West 118th Street,
New York, New York 10027
(212) 866-8591.

Attorneys for Plaintiffs.

Notice of Proposed Order.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted In Printing.)

To:

Jean M. Coon,
Assistant Attorney General,
State Capitol,
Albany, New York 12224.

Mario C. Gambacorta,
Erie County Welfare Attorney,
County Hall,
Buffalo, New York.

Leonard C. Koldin,
600 South State Street,
Syracuse, New York 13202.

PLEASE TAKE NOTICE that the attached order will b
presented to the United States District Court for the Weste
District of New York, pursuant to the Decision and Order
that Court herein which was entered on July 28, 1972.

MAYER G. FREED,
Attorney for Plaintiffs,
423 West 118th Street,
New York, New York 10027.

Proposed Order.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted In Printing.)

This matter having come on to be heard on July 2, 1971, July 9, 1971, July 16, 1971, February 24, 1972, and pursuant to this Court's opinion of July 28, 1972, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That pursuant to 28 U. S. C. §§2201 and 2202, N. Y. Soc. Serv. L. §§131 (4) and 350-k, 18 N. Y. C. R. R. Part 385, and all Administrative Letters of the New York State Department of Social Services issued pursuant thereto (these statutes, regulations and Administrative Letters are hereafter referred to collectively as the "New York Work Rules"), be and are hereby declared to be in conflict with §402 (a) (10) of the Social Security Act of 1935 as amended, 42 U. S. C. §602 (a) (10), and to be preempted by §§402 (a) (19) and 430 *et seq.* of the Social Security Act of 1935, as amended, 42 U. S. C. §§602 (a) (19) and 630 *et seq.*, and are unconstitutional under the supremacy clause of Article VI of the United States Constitution, insofar as they are applied to applicants for or recipients of Aid to Families with Dependent Children and Aid to Families with Dependent Children—Unemployed Parent (these two programs will hereafter be referred to as "AFDC") in the State of New York.

2. That from the date of this Order, Defendents, their successors, agents, and all persons acting in concert with them, be and hereby are permanently enjoined, ordered, and directed to cease all enforcement of the New York Work Rules against recipients of and applicants for AFDC in the State of New York.

3. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, be and are hereby enjoined, ordered, and directed to award, within one hundred and twenty (120) days from the issuance of this Order, or in the alternative are hereby enjoined, ordered and directed to require each local Social Services District in the State of New York to award, within one hundred and twenty (120) days from the issuance of this Order, to each applicant for or recipient of AFDC during the period from July 1, 1971 until the date of this Order who was denied AFDC assistance or whose AFDC assistance was terminated pursuant to the New York Work Rules, those benefits of which each such person was deprived pursuant to the implementation of the New York Work Rules. Such award of retroactive payments shall consist of all benefits to which each person would have been entitled but for the operation of the New York Work Rules, and shall not be limited to benefits for the thirty (30) day period of ineligibility under the New York Work Rules. Where any such person, after having been denied AFDC or after having had AFDC benefits terminated, did not reapply for AFDC until more than thirty (30) days after such denial or termination of AFDC, or did not reapply at all, such award of retroactive payments shall be for the entire period during which such person received no assistance, unless it can be shown to the satisfaction of this Court that such person would not have been eligible for AFDC for reasons other than application of the New York Work Rules. Such award of retroactive payments will be mailed to each such person currently receiving AFDC within one hundred twenty (120) days from the issuance of this Order with an Explanatory Letter, said letter having first been approved by Plaintiffs' attorneys. Any award received pursuant to this paragraph shall not be

deemed income or resources for purposes of computing eligibility for public assistance. For such persons not presently receiving AFDC:

(a) A certified letter (return receipt requested), said letter having first been approved by Plaintiffs' attorneys, will be sent to the last known address of each such person, informing him or her in concise and easily understandable terms of his or her right to reapply for AFDC benefits, and that he or she is owed an award of retroactive assistance, with the amount specified by the New York State Department of Social Services, that such amount may be claimed by contacting the local Social Services District, at a specified address, within seventy five (75) days from the receipt of said letter and that if such a claim is not made within seventy five days, said award of retroactive payment will be forfeited.

(b) If the local Social Services District has not received such a request for the award of retroactive payments within seventy five (75) days from the date of the returned receipt, the right to said award of retroactive payment shall be forefeited.

4. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine be and are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or are enjoined, ordered and directed to require each local Social Services District in the State of New York to award, within one hundred twenty (120) days from the issuance of this Order, to each current or former recipient of AFDC who, from July 1, 1971 until the date of this Order, expended money to comply with the requirements of the New York Work Rules, such money as was expended by each such recipient to comply with the requirements of the New York Work Rules.

To effectuate this Order Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to send a certified letter (return receipt requested), said letter first having been approved by Plaintiffs' attorneys, to each current or former recipient of AFDC who, during the period from July 1, 1971 until the date of this Order, was declared "employable" pursuant to the New York Work Rules, notifying such recipient of his or her right to apply to the local Social Services District for compensation for expenditures incurred in complying with the New York Work Rules and that if such application is not made within seventy five (75) days, the right to said compensation shall be forfeited.

If the local Social Services District has not received such an application within seventy five (75) days from the date of the returned receipt, the right to said compensation shall be forfeited.

As to each such current or former recipient of AFDC who contacts the local Social Services District to apply for such compensation, a representative of the local Social Services District shall meet with such recipient to determine the amount of money expended, and shall authorize the payment of such amount to the recipient.

5. That Defendants New York State Department of Social Services and Abe Lavine be and are hereby enjoined, ordered, and directed to require each local Social Services District in the State of New York to hereafter deliver all checks for AFDC benefits by mail, such checks to be for the full monthly or semi-monthly benefit, and to cease requiring any AFDC recipients, including any person participating in the Work Incentive Program, to obtain his or her check for

AFDC benefits by reporting in person to an office of the State Employment Service.

6. That Plaintiff's First, Second, and Third Causes of Action be and are hereby dismissed, except that with respect to Plaintiffs' Second Cause of Action, Defendants New York State Department of Social Services and its Commissioner Abe Lavine, be and hereby are enjoined, ordered and directed to send a letter to each recipient of Home Relief, who has been declared employable pursuant to the New York Work Rules, which shall contain the following statement in both English and Spanish:

> "When you were classified as an unemployed employable recipient on (date), the letter which notified you of your classification did not inform you that you had the right to request a fair hearing if you disagreed with your classification as an unemployed employable. This letter is to inform you of your right to such a hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons to feel you are not employable, fill out the enclosed form requesting a fair hearing and return it to this Department in the enclosed pre-paid self addressed envelope."

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered and directed to enclose with such letter a form requesting a fair hearing, together with a pre-paid self addressed envelope. Said form shall state in both English and Spanish:

"I ..... hereby request a
(name)
fair hearing to contest my classification as an unemployed employable recipient. I feel I am not employable because ....."

Further, Defendants New York State Department of Social Services and its Commissioner are hereby enjoined, ordered and directed to require each local Social Services District, when notifying any recipient of Home Relief of his or her classification as an unemployed employable recipient, to include in such letter the following statement in both English and Spanish:

"If you disagree with your classification as an unemployed employable recipient, you may request a fair hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons to feel you are not employable, fill out the enclosed form requesting a fair hearing and return it to this Department in the enclosed self addressed envelope."

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered, and directed to require each local Social Services District to enclose with the aforesaid letter notifying a recipient of Home Relief of his or her classification as an unemployed employable recipient, a form requesting a fair hearing, together with a pre-paid self addressed envelope. Said form shall state in both English and Spanish:

"I ..... hereby request a
(name)
fair hearing to contest my classification as an unem-

ployed employable recipient. I feel I am not employable because ....."

7. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or in the alternative are hereby enjoined, ordered, and directed to require each local Social Services District to award, within one hundred twenty (120) days from the issuance of this order, to each applicant for or recipient of Home Relief during the period from July 1, 1971 until the date of this Order who was denied Home Relief assistance or whose Home Relief assistance was terminated pursuant to the New York Work Rules without having been informed that he or she had a right to a fair hearing to contest his or her classification as an unemployed employable recipient, those benefits of which such person was deprived pursuant to the implementation of the New York Work Rules. Such award of retroactive payments shall consist of all benefits to which such such person would have been entitled but for the operation of the New York Work Rules, and shall not be limited to benefits for the thirty (30) day period of ineligibility under the New York Work Rules. Where any such person, after having been denied Home Relief or after having had Home Relief benefits terminated, did not reapply for Home Relief until more than thirty (30) days after such denial or termination of Home Relief, or did not reapply at all, such award of retroactive payments shall be for the entire period during which such person received no assistance, unless it can be shown to the satisfaction of this Court that such person would not have been eligible for Home Relief for reasons other than the application of the New York Work Rules. Such award of retoractive benefits will be

mailed to such person currently receiving Home Relief within one hundred twenty (120) days from the issuance of this Order with an Explanatory Letter, said letter having first been approved by Plaintiffs' attorneys. Any award received pursuant to this paragraph shall not be deemed income or resources for pusposes of computing elibitility for public assistance. For such persons not presently receiving Home Relief:

(a) A certified letter (return receipt requested), said letter having first been approved by Plaintiffs' attorneys, will be sent to the last known address of each such person, informing him or her in concise and easily understandable terms of his or her right to reapply for AFDC benefits and that he or she is owed an award of retroactive assistance, with the amount specified by the New York State Department of Social Services, that such amount may be claimed by contacting the local Social Services District, at a specified address, within seventy-five (75) days from the receipt of said letter, and that if such a claim is not made within seventy-five (75) days, said award of retroactive payment will be forfeited.

(b) If the local Social Services District has not received such a request for the award of retroactive payments within seventy-five (75) days from the date of the returned receipt, the right to said award of retroactive payment shall be forfeited.

8. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, be and are hereby enjoined, ordered, and directed to communicate immediately with each local Social Services District in the State of New York, by formal Administrative Letter, such letter having first been approved by Plaintiffs' attorneys, to

inform each such District of the contents of this Order, and to order each such District to comply with the provisions of this Order.

9. That within fifteen (15) days from the date of this Order, Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, shall submit to this Court and to the Plaintiffs' attorneys a detailed statement as to the method for effectuating the relief required herein. Any disputes between the parties as to whether the procedures and steps outlined by the Defendants will fulfill the requirements of this Order shall be resolved by this Court.

10. That costs of this action be and hereby are taxed against Defendants and in favor of Plaintiffs.

11. That attorneys' fees be and hereby are taxed against Defendants and in favor of Plaintiffs.

12. That this Court shall retain continuing jurisdiction over this cause for all purposes.

Dated:

Enter:

JAMES L. OAKES,
USCJ.

JOHN O. HENDERSON,
USDJ.

JOHN T. CURTIN,
USDJ.

Proposed Amendment to Proposed Order.

IN THE UNITED STATES DISTRICT COURT

For the Western District of New York

(Title Omitted In Printing.)

Plaintiffs submit the following Proposed Amendment to their Proposed Order. The amendment would replace Paragraphs 6 and 7 of the Proposed Order with the following:

"(6) That Plaintiffs' First, Second, and Third Causes of Action be and are hereby dismissed, except that with respect to Plaintiffs' Second Cause of Action, Defendants New York State Department of Social Services and its Commissioner Abe Lavine, be and hereby are enjoined, ordered and directed to provide each recipient of Home Relief with a fair hearing (hereafter a "hearing") prior to requiring compliance with the New York Work Rules and to send a letter to each recipient of Home Relief who has been declared employable pursuant to the New York Work Rules, which shall contain the following statement in both English and Spanish:

"When you were classified as an unemployed employable recipient on ..... (date), the letter which notified you of your classification did not inform you that you had the right to request a hearing if your disagreed with your classification as an unemployed employable. This letter is to inform you of your right to such a hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons you feel you are not employable, fill out the enclosed form requesting a hearing and return it to this Department in the enclosed prepaid self-addressed envelope.

Proposed Amendment to Proposed Order.

'If you request a hearing within seven days of receipt of this notice you will not be considered employable until you receive a decision from your hearing officer. That decision will inform you of what you must do thereafter. In the meantime, you will receive your check in the mail.'

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered and directed to enclose with such letter a form requesting a hearing, together with a pre-paid self-addressed envelope. Said form shall state in both English and Spanish:

'I . . . . . hereby request a
(name)
hearing to contest my classification as an unemployed employable recipient. I feel I am not employable because
. . . . . .
. . . . . .'

Further, Defendants New York State Department of Social Services and its Commissioner are hereby enjoined, ordered and directed to require each local Social Services District, when notifying any recipient of Home Relief of his or her classification as an unemployed employable recipient, to include in such letter the following statement in both English and Spanish:

'If you disagree with your classification as an unemployed employable recipient, you may request a hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons to feel you are not employable, fill out the enclosed form requesting a hearing and return it to this Department in the enclosed self addressed envelope.'

'If you request a hearing within seven days of the receipt of this notice you need not comply with this letter until you receive a decision from your hearing officer. That decision will inform you of what you must do thereafter. In the meantime, you will receive your check in the mail.'

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered, and directed to require each local Social Services District to enclose with the aforesaid letter notifying a recipient of Home Relief of his or her classification as an unemployed employable recipient, a form requesting a hearing, together with a pre-paid self addressed envelope. Said form shall state in both English and Spanish:

'I . . . . . hereby request a
(Name)
hearing to contest my classification as an unemployed employable recipient. I feel I am not employable because

. . . . . .
. . . . . .'

"(7) That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or in the alternative are hereby enjoined, ordered, and directed to require each local Social Services District to award, within one hundred twenty (120) days from the issuance of this Order, to each applicant for or recipient of Home Relief during the period from July 1, 1971 until the date of this Order who was denied Home Relief assistance or whose Home Relief Assistance was terminated pursuant to the New York Work Rules without having been informed that he or she had a right to a hearing prior to compliance with such Rules

n which to contest his or her classification as an unemployed employable recipient, those benefits of which such erson was deprived pursuant to the implementation of the lew York Work Rules. Such award of retroactive payments hall consist of all benefits to which each such person would ave been entitled but for the operation of the New York Vork Rules, and shall not be limited to benefits for the hirty (30) day period of ineligibility under the New York Vork Rules. Where any such person, after having been enied Home Relief or after having had Home Relief enefits terminated, did not reapply for Home Relief until ore than thirty (30) days after such denial or termination f Home Relief, or did not reapply at all, such award of etroactive payments shall be for the entire period during hich such person received no assistance, unless it can be own to the satisfaction of this Court that such person ould not have been eligible for Home Relief for reasons ther than the application of the New York Work Rules. uch award of retroactive benefits will be mailed to such erson currently receiving Home Relief within one hundred enty (120) days from the issuance of this Order with an xplanatory Letter, said letter having first been approved by laintiffs' attorneys. Any award received pursuant to this aragraph shall not be deemed income or resources for purses of computing eligibility for public assistance. For such ersons not presently receiving Home Relief:

(a) A certified letter (return receipt requested), said letr having first been approved by Plaintiffs' attorneys, will sent to the last known address of each such person, inrming him or her in concise and easily understandable rms of his or her right to reapply for Home Relief benefits d that he or she is owed an award of retroactive assistance, th the amount specified by the New York State Departent of Social Services, that such amount may be claimed by ntacting the local Social Services District, at a specified

address, within seventy-five (75) days, said award of retroactive payment will be forfeited.

(b) If the local Social Services District has not received such a request for the award of retroactive payments within seventy-five (75) days from the date of the returned receipt, the right to said award of retroactive payment shall be forfeited."

Add a new paragraph 8 to read as follows:

"(8) That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine be and are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or are enjoined, ordered and directed to require each local Social Services District in the State of New York to award, within one hundred twenty (120) days from the issuance of this Order, to each current or former recipient of Home Relief who, from July 1, 1971 until the date of this Order, without first being given a hearing on the question of the correctness of his or her classification under the New York Work Rules, expended money to comply with the requirements of the New York Work Rules, such money as was expended by each such recipient to comply with the requirements of the New York work Rules.

To effectuate this Order Defendants New York State Department of social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to send a certified letter (return receipt requested), said letter first having been approved by Plaintiffs' attorneys, to each current or former recipient of Home Relief, who during the period from July 1, 1971 until the date of this Order, was declared "employable" pursuant to the New York Work Rules, notifying such recipient of his or her right to apply to the local Social Services District for compensation for ex-

penditures incurred to complying with the New York Work Rules and that if such application is not made within seventy five (75) days, the right to said compensation shall be forfeited.

If the local Social Services District has not received such an application within seventy five (75) days from the date of the returned receipt, the right to said compensation shall be forfeited.

As to each such current or former recipient of Home Relief who contracts the local Social Services District to apply for such compensation, a representative of the local Social Services District shall meet with such recipient to determine the amount of money expended, and shall authorize the payment of such amount to the recipient."

And renumber Paragraphs 8, 9, 10, 11 and 12 as Paragraphs 9, 10, 11, 12 and 13, respectively.

Dated: New York, New York

Respectively submitted,

LEGAL AID BUREAU OF
BUFFALO, INC.,
NEIGHBORHOOD LEGAL SERVICES,
Michael A. O'Connor, *Of Counsel,*
481 Swan Street,
Buffalo, New York 14204.

/s/ DENNIS R. YEAGER,
Mayer G. Freed,
423 West 118th Street,
New York, New York 10027,
(212) 866-8591.

Notice of Appeal of State Appellants.
Notice of Appeal of Erie County Defendants.

Order Dated October 18, 1972 Amending Prior Order.

[Printed in full in Appendix to Jurisdictional statement of State appellants].

Notice of Appeal of State Appellants.

[Printed in full in Appendix to Jurisdictional statement of State appellants].

Notice of Appeal of Erie County Defendants.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Notice is hereby given that the Erie County Department of Social Services and its Commissioner, George G. Sipprell, Defendant above named, hereby appeal to the Supreme Court of the United States from the final order and judgment entered in this action on August 25, 1972, holding New York Social Services Law, Sec. 131 (4) and 350-k, and the Rules of the Department of Social Services adopted pursuant thereto to be in conflict with Section 402 (a) (10) of the Social Security Act of 1935, as amended, 42 U. S. C. Section 602 (a) (10), and to be pre-empted by Sections 402 (a) (19)

and 430 *et seq.* of the Social Security Act of 1935, as amend-
ed, 42 U. S. C. Sec. 602 (a) (19) and 603 *et seq.* and to be un-
constitutional under the Supremacy Clause of Article VI of
he Constitution of the United States, insofar as they are ap-
lied to applicants for or recipients to Aid to Families with
Dependent Children, and dismissing plaintiffs' First,
econd, and Third Causes of Action. Defendant-Intervenors
peal from each and every part of said order and judgment,
cept that part thereof which dismissed plaintiffs' First,
cond and Third Causes of Action.

This appeal is taken pursuant to 28 U. S. C. Section 1253.

ted: Buffalo, New York,
October 10, 1972.

JAMES L. MAGAVERN,
Erie County Attorney,
Attorney for Defendants
Erie County.

GREGORY STAMM,
Welfare Attorney of Counsel,
Office and P. O. Address,
Room 759—95 Franklin Street,
Buffalo, New York 14202,
(716) 846-6537.

n K. Adams, Clerk,
ted States District Court,
ted States Court House,
gara Square,
falo, New York 14202.

Michael A. O'Connor, Esq.,
Attorneys for Plaintiffs,
Legal Aid Bureau of Buffalo, Inc.,
481 Swan Street,
Buffalo, New York 14204.

Dennis R. Yeager, Esq.,
Attorney for Plaintiffs,
423 West 118th Street,
New York, New York 10027.

Louis J. Lefkowitz,
Attorney General of the State of New York,
By: Jean M. Coon, Assistant Solicitor Gen.,
Attorney for Defendant, State Departments and State Officers,
Department of law,
The Capitol,
Albany, New York 12224.

Philip C. Pinsky,
Onondaga County Welfare Attorney,
Attorney for Defendant-Intervenors,
600 South State Street,
Syracuse, New York 13202.

Notice of Appeal of Onondaga County Appellants.

[Printed in full in Jurisdictional Statement of Onondaga County appellants].

Letter Dated January 15, 1973.

Office of the Clerk
Supreme Court of the United States
Washington, D. C. 20543

January 15, 1973

Albany, N. Y.

Honorable Louis J. Lefkowitz
Attorney General of New York
Capitol—Department of Law
Albany, New York 12224

RE: *N. Y. State Dept. of Social Services v. Dublino, No. 72-792 and Onondaga County Dept. of Social Services v. Dublino, No. 72-802*

Dear Sir:

The Court today took the following action in the above cases:

"The motion of appellees for leave to proceed *in forma pauperis* is granted. In these cases further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of one hour is alloted for oral argument."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52 (a) is due and payable in No. 72-792.

Very truly yours,

MICHAEL RODAK, JR., *Clerk,*
By Helen K. Loughran,
(Mrs.) Helen K. Loughran,
Assistant Clerk.

Air Mail
cc: Phillip C. Pinsky, Esq.,
Gregory Stamm, Esq.

-792
FILE COPY
(229-C)
NOV 29 19
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

and

Appellants,

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Appellants
New York State Departments of Social Services and Labor and their Commissioners
The Capitol
Albany, New York 12224
Telephone (518) 474-7138

RUTH KESSLER TOCH
Solicitor General

IRAN M. COON
Assistant Solicitor General

of Counsel

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

RESPONSE NOT PRINTED

TABLE OF CONTENTS.

	PAGE
Opinion below	2
Jurisdiction	3
Statutes Involved	5
Question Presented	7
Statement of the Case	7
The Question is Substantial	14
Conclusion	19
Appendix "A"—Opinion of the Court	20
Appendix "B"—Final Judgment Appealed From	39
Appendix "C"—Order Amending Judgment	44
Appendix "D"—Notice of Appeal	46
Appendix "E"—New York Law of 1971, Chapter 101	49

Table of Authorities.

Constitution.

U. S. Constitution, Article VI 2, 4, 7, 13
U. S. Constitution, Amendment XIII 3, 4, 7, 13
U. S. Constitution, Amendment XIV 3, 4, 7, 13

Statute Citations.

New York Social Services Law, § 131(4) 2, 3, 5
New York Social Services Law, § 350-k 2, 3, 6, 11, 12
New York Laws of 1971, chapter 101 ..... 2, 3, 4, 6, 7, 9, 12
New York Laws of 1971, chapter 102 ..... 2, 3, 4, 5, 7, 9, 12
U. S. Social Security Act, 42 U. S. C. 2

Administrative Regulations.

18 New York Code of Rules and Regulations, § 385, *et seq.* 3

II.

Case Citations.

PAGE

Bueno v. *Juras*, ____ F. Supp. ____ (D. C., Ore., 1972 14
Chrysler v. *Rhodes*, 416 F. 2d 319 18
Dandridge v. *Williams*, 397 U. S. 471 ..... 5, 17
Engineer v. *Chicago, R. I. & R. R. Co.*, 382 U. S. 423 .. 18
New Mexico Bd. of Examiners v. *Roberts*, 70 N. M. 90, 370 P. 2d 811 18
Schwartz v. *Texas*, 344 U. S. 199 18
Snell v. *Wyman*, 281 F. Supp. 853, affd. 393 U. S. 323 .. 5, 17
Woolfolk v. *Brown*, 325 F. Supp. 1162, affd. 456 F. 2d 652, cert. den. ____ U. S. ____ (10/10/72) 14

IN THE

Supreme Court of the United States

October Term, 1972

No. .....

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

On Appeal From the United States District Court for The Western District of New York

STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

Pursuant to Rules 13 (2) and 15 of the Rules of the Supreme Court of the United States, the appellants, the New York State Department of Social Services, its Commissioner, Abe Lavine, the New York State Department of Labor (erroneously designated as the Department of Industrial Relations in the caption of the complaint), and its Commissioner, Louis L. Levine, file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgment in question, and should exercise such jurisdiction in this case.

Opinion Below

The opinion of the Judges in this case, sitting as a statutory Court of three judges, written by the Hon. JOHN T. CURTIN, Judge of the United States District Court for the Western District of New York, and concurred in by the Hon. JAMES OAKES, Associate Judge of the United States Court of Appeals for the Second Circuit, and by the Hon. JOHN O. HENDERSON, Judge of the United States District Court for the Western District of New York, sustained the complaint in part, holding that New York Social Services Law, §§ 131(4) and 350-k, as enacted by Chapters 101 and 102 of the New York Laws of 1971, and the Rules of the New York State Department of Social Services, adopted pursuant thereto, conflict with section 402(a) (10) of the Social Security Act of 1935, as amended (42 U. S. C. § 602 [a] [10]), and are preempted by sections 404 (a) (19) and 430 *et seq.* of the Social Security Act of 1935, as amended (42 U. S. C. §§ 602[a] [19] and 630 *et seq.*), and are, therefore, unconstitutional under the Supremacy Clause of Article VI of the Constitution of the United States, insofar as the New York State statutes and rules referred to are

applied to applicants for and recipients of Aid to Families with Dependent Children (AFDC). The judgment enjoined further implementation of the statutes and rules as to such persons. The decision and judgment entered thereon dismissed those causes of action stated in the complaint which alleged that the State statutes and rules conflicted with the Thirteenth and Fourteenth Amendments to the Constitution of the United States, except that the judgment directed that, as to Home Relief recipients (the State's general relief category which is not Federally assisted), such persons be specifically notified of their right to a fair hearing on the issue of employability.

The opinion of the Court is set out in the Appendix hereto and marked as Appendix "A". The final judgment appealed from is set out in the Appendix hereto and marked as Appendix "B". There is as yet no citation to the opinion. A motion to amend the judgment, made by plaintiffs, was granted to a limited extent and an order amending the judgment was entered October 18, 1972, a copy of which is attached hereto as Appendix "C".

Jurisdiction

The appeal herein is from a final judgment made and entered in the United States District Court for the Western District of New York by a specially constituted three-judge panel convened therein under United States Code, §§ 2281 and 2284. The judgment holds the "New York Work Rules", comprising sections 131(4) and 350-k of the New York Social Services Law, as added by Chapters 102 and 101 of the New York Laws of 1971, respectively, and the rules of the Department of Social Services, adopted pursuant thereto and in implementation thereof, (18 N. Y. C. R. R., § 385.1 *et seq.*) unconstitutional insofar as they

apply to applicants for and recipients of Aid to Families with Dependent Children. They were found to be unconstitutional on the ground that the State statutes and rules conflict with the Federal statutes relating to the Work Incentive Program (WIN) (42 U. S. C. §§ 602(a)(10), 602(a)(19) and 630 *et seq.*) and are thus in violation of the Supremacy Clause of Article VI of the Constitution of the United States. The judgment enjoins the defendants from further implementation of the Work Rules as to AFDC applicants and recipients.

The complaint sought declaratory and injunctive relief against enforcement of Chapters 101 and 102 of the Laws of 1971, and the rules adopted pursuant thereto, alleging that the statutes violated the Thirteenth Amendment to the Constitution of the United States, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and conflicted with Federal statutes in violation of the Supremacy Clause of Article VI of the Constitution. The New York statutes and rules provide for the referral of persons, deemed to be employable and who are recipients of public assistance, to the office of the New York State Division of Employment for job referral and manpower services, required semi-monthly reporting for such referral and that recipients pick up assistance checks at the same employment office, and further provide for public works employment for persons not placed in regular employment.

The final judgment granting the relief sought in the complaint was made and entered August 25, 1972. Notice of Appeal on behalf of the State defendants was filed on September 28, 1972 in the United States District Court for the Western District of New York (a copy of which notice is set out in the Appendix hereto and is marked as Appendix "D").

The Supreme Court of the United States has jurisdiction to review by direct appeal the final judgment above cited, pursuant to the terms of 28 United States Code, § 1253.

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Dandridge* v. *Williams*, 397 U. S. 471 (1970), and *Snell* v. *Wyman*, 393 U. S. 223 (1968).

Statutes Involved

New York Social Services Law (McKinney's Consolidated Laws of New York, Vol. 52-A), section 131(4), as amended by Chapters 102 and 298, § 5 of the New York Laws of 1971, provides:

"4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

"A person shall be deemed to have refused to accept such employment if he:

a. Fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. wilfully fails to report to such office the result of a referral to employment, or

d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be re-

ported immediately to the social services district by such employment office.

"For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department."

(Subdivision 5 referred to above provides for referrals by the Division of Employment for vocational training.)

New York Social Services Law, § 350-k, as added by Chapter 101 of the New York Laws of 1971, provides for public works project employment for employable recipients of AFDC who are not able to be placed in regular employment. The full text of Chapter 101 of the Laws of 1971 is set out as Appendix "E" hereto.

Question Presented

Where, by determination of the United States Secretary of Labor, the Federal program for work and training referral of public assistance recipients (WIN) is not in operation in all welfare districts of the State and where in these districts in which the program is in operation, the opportunities for referral of public assistance recipients are limited by the operation of the Federal law to only a fraction of the unemployed employable public assistance recipients, and Congress has not specifically stated that the WIN Program is the exclusive vehicle for job referral of such persons, can the States adopt programs and requirements for work referral and for public works employment of persons not eligible for referral under the Federal statute or for whom there are no employment or training positions available under the Federal program?

Statement of the Case

Plaintiffs, suing on behalf of themselves and their minor children, commenced this action seeking to have Chapters 101 and 102 of the New York Laws of 1971, and the rules promulgated pursuant thereto, declared unconstitutional, alleging that they violated the Thirteenth Amendment to the Constitution of the United States, the Due Process and Equal Protection Clauses of the Fourteenth Amendment and so conflicted with the Federal Social Security Act of 1935, as amended, that they were in violation of the Supremacy Clause of Article VI of the Constitution. The complaint sought an injunction restraining enforcement and implementation of the statutes.

The action was commenced by Order to Show Cause on July 1, 1971, the effective date of the statutes. Temporary

restraining orders were signed by the Court as to the five original plaintiffs and, after the action had been determined by the Court to be a class action, temporary restraining orders were granted to approximately fifty other members of the plaintiff class on motions by plaintiffs' attorneys. Plaintiffs so represented reside in Erie, Onondaga, Cattaraugus, Broome, Orleans, Wyoming, Sullivan, Albany, Rensselaer, Rockland and New York Counties. The plaintiffs, on whose behalf the orders were issued, thus represent a geographic cross-section of the State and presumably also the range of problems arising out of the implementation of the State Work Rules.

The statutes here in question had been enacted by the Legislature of the State of New York as a part of a welfare reform program recommended by the Governor in a Special Message to the Legislature in March, 1971. In that Message, Governor Rockefeller stated, as to the general issues involved in the proposed legislation:

> "* * * I am recommending a complete reorganization conceptually and structurally, of the welfare program for New York State in order to give greater opportunity and incentive to the individual to achieve independence, self-sufficiency, and human dignity.
>
> * * *
>
> "My purpose in recommending far-reaching reorganizational proposals is to see to it that we not only continue to meet the basic needs of those who cannot do for themselves, but that we also encourage the young and able-bodied, temporarily in need of assistance through no fault of their own, to achieve the education and the skills, the motivation and the determination that will make it possible for them to become increasingly self-sufficient, independent citizens who can contribute to and share in the responsibility for their families and our society."

As to the specific legislative proposals which became chapters 101 and 102 of the Laws of 1971, the Governor's Message continued:

> "Work is essential to a healthy individual and a healthy society.
>
> "Welfare should be a bridge to work for those able to work, as well as a shield against want.
>
> "Welfare benefits should aid those who work and need supplemental help."

The welfare reform program was proposed for broad benevolent social purposes and was not a repressive measure designed solely to alleviate the State's fiscal crisis, as alleged by the plaintiffs.

Subsequent to the enactment of the statutes, the State Department of Social Services adopted rules and regulations for the implementation of the statutes, and advised the local departments in the social services districts of the State as to procedures, both in writing and in meetings with employees of the local departments. The statutory definition of employable was further defined by the State Department of Social Services for the guidance of the local departments in making determinations as to employability under the statutes. That definition provides:

> "All ADC or HR applicants or recipients age 16 and over shall be deemed employable except by reason of:
>
> (a) Full-time employment;
>
> (b) Attendance at school full-time for a minor other than an emancipated minor;
>
> (c) Attendance full-time in grade or high school for an emancipated minor;
>
> (d) Full-time satisfactory participation in an approved program of vocational training or rehabilitation, which shall include but not be limited to particips-

tion in the Work Incentive Program and a two-year college program with specific vocational objective;

(e) Part-time employment to the extent permitted by medical verification, or because of inability to secure adequate care for children or other incapacitated members except on a part-time basis;

(f) Mental or physical illness or incapacity which has been medically verified to be of a significant or substantial nature so as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it has been verified that the individual would be potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable only when determined medically to be free of drug use, or participating in a methadone maintenance program or rehabilitation program; or,

(g) The need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated or who are children, and for whom required care is not otherwise available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care."

In determining whether the mother's presence in the home is essential, the local social services district was explicitly instructed to consider:

"(1) The nature and extent of the incapacity; what effect the mother's absence would have on the health and welfare of the incapacitated person; whether other services or the assistance of others is available, and whether such alternative plans would adversely affect the incapacitated person.

"(2) The number of children in the home, their respective ages, the existence of illness, handicap or special needs; what effect the mother's absence

would have on the health and welfare of the children; whether an adequate plan of child care is available; and whether such plan of child care would adversely affect the health and welfare of children."

If a public assistance recipient contests his classification as employable, he is entitled to a fair hearing on that issue, without having to first refuse a referral for employment and risk termination or grant reduction for noncompliance.

As to the public works project portion of the legislation, an Administrative Letter of the State Department of Social Services was sent to local social services commissioners relative to the implementation of the legislation. The purpose of the statute was set forth in that letter:

"It is anticipated that employment on Public Work Projects will have a positive influence on the attitudes and morale of the participants and will also have a beneficial effect on their families.

"Public Work Projects shall provide the following:

"(a) Work experience in preference to inactivity, while also providing work training for the inexperienced;

"(b) Meaningful work for the recipient, while providing meaningful service to the public;

"(c) The conservation and/or the development of work skills in order to maintain recipients' employability, thereby enabling participants to move from the Public Works Projects into the regular labor market."

It should be noted that the provisions of section 350-k of the Social Services Law, which provide for public work project participation by AFDC recipients, were not implemented because of an objection by the HEW Regional Commissioner which indicated that such projects would not be approved for Federal aid. The only public work proj-

ect provisions which were implemented were those for Home Relief recipients and, although Social Services Law, § 164 did not include procedural safeguards as did section 350-k, the regulations of the Commissioner of Social Services relative to section 164 included the same safeguards as had been statutorily provided for the AFDC recipients.

Subsequent to the initial implementation of chapters 101 and 102, problems which arose in connection therewith resulted in changes in the law and regulations. After the first six months of the operation of the program, the Department of Social Services adopted a new regulation to provide an exemption from semi-monthly reporting requirements for any person with a transportation hardship. In such case, either the local social services district may arrange transportation for the recipient or provide for reporting by mail. Additionally, the 1972 Legislature made two statutory changes. It exempted from reporting requirements persons engaged in full-time training and vocational rehabilitation programs (Chapter 683, Laws of 1972) and provided that shelter allowances would be paid monthly, rather than as a part of the semi-monthly assistance payments (Chapter 685, Laws of 1972).

A perspective on the development of the program is found in the Report of the Sub-Committee on Welfare Reform of the New York State Temporary Commission to Revise the Social Services Law, published in January, 1972. That report observes "in a time of slump, the fact is that jobs are being developed and placements of relief recipients are being made." The Commission found that certain changes should be made in the law and, in fact the two statutory clauses which were adopted in 1972 by the Legislature and referred to above were a part of the legislative recommendations of the Commission.

The District Court, in its decision, rejected plaintiffs' contention that the statutes violate the Thirteenth and Fourteenth Amendments to the Constitution of the United States. As to the contention as to the Thirteenth Amendment, the Court observed: "Requiring employable persons on public assistance to engage in employment, if available, in the absence of circumstances different from those presented in this case, is entirely proper."

As to the contentions as to the Fourteenth Amendment, the Court stated:

> "A statutory classification in the area of social welfare, however, is consistent with the Equal Protection Clause if it is 'rationally based and free from invidious discrimination,' see *Dandridge* v. *Williams*, 397 U. S. 471 (1970). The Work Rules reflect a judgment by the state's Executive and Legislature that a drastic revision of the state's welfare program was in order. This court cannot say that the Rules are without a rational basis under the circumstances."

As to the Due Process Clause violation arguments, the Court found no denial of due process, although it did find that recipients needed to be advised of their rights to fair hearings and the Court directed that suitable means of notifying HR recipients of their right to fair hearings on the issue of employability be implemented within thirty days after filing of the decision.

Although upholding the statute as against claims of unconstitutionality under the Thirteenth and Fourteenth Amendments, the Court did hold the State statute to be in conflict with the Federal Social Security Act, specifically the WIN (Work Incentive) Program, and thus to be in violation of the Supremacy Clause of Article VI of the Constitution of the United States.

In so doing, the Court relied primarily upon a decision of the United States District Court for the Eastern District of Virginia (*Woolfolk* v. *Brown*, 325 F. Supp. 1162 [1971], affd. 456 F. 2d 652 [4th Cir. 1972]), for although the Court also cited an Oregon case (*Bueno* v. *Juras*, ____ F. Supp. ____ [1971]), the Oregon Court had relied solely upon the *Woolfolk* case for its decision. A petition for certiorari was filed by the defendants in the Virginia case and certiorari was denied on October 10, 1972 by this Court. That case, however, which involved specific questions as to specific individuals residing in an area where the WIN Program was in operation and who had not been found to be inappropriate for WIN referral prior to referral for employment under the State program, has been applied as a general principle of law by the Court below in this case to invalidate programs as to a broad general class of persons, including those residing in areas not within the WIN program.

The Question is Substantial

The sole issue raised by this appeal is whether Congress, in enacting the WIN Program and in providing limited funding for it, intended that this very limited work referral program should supersede and preempt State programs of broader supplemental application. The State of New York does not take the position that persons eligible for and referable to WIN should not be so referred. In fact, the witnesses for the social services departments State and local, all stated that where public assistance recipients were eligible for WIN referrals and where there were WIN slots available for them, such recipients must be referred to WIN and not through the State program. In intention and operation, therefore, the State program was intended to supplement WIN.

The substantiality of the question so presented is apparent from a statistical comparison of the operation of the Federal and State programs. In New York, the WIN Program is restricted geographically in the sense that it exists in only 12 of the State's 64 social services districts. The actual designation of only 12 districts in which the WIN Program is to operate was made by the United States Secretary of Labor. The request of the New York State Department of Social Services that the Federal Labor Secretary expand the WIN program, by designating additional social services districts for the program, has been denied. Unlike New York State's Social Services Law work referral provisions, the WIN program by Federal design is restricted to specific areas of the State and as such is available only to very limited numbers of AFDC recipients.

The 12 social services districts which have a WIN Program in operation are also limited to a total slot allocation of 16,800 persons. Initially, when the Program was implemented in New York in 1968 there were 14,800 slots authorized. In April, 1972, the slot allocation was increased to the present level of 16,800. Under the revised WIN Program, effective July 1, 1972, it is estimated that there are 75,000 registered AFDC recipients who are potential WIN participants but the Program will not have the capacity to accommodate more than a fraction of this number. Clearly then, the State must turn to other manpower programs, such as the work referral program here at issue, if the State is to meet its responsibilities, mandated under the Federal Social Security Act, to help welfare recipients become self-supporting. The disparity between the effectiveness and scope of the Federal and State programs is apparent from the fact that in the period from

January through June, 1972 there were a total of 2,657 job placements under the WIN Program, as compared with a total of 5,323 placements in the same period under the State's work referral program, even though the WIN Program is operating in those districts having 90% of the total number of welfare recipients in the State.

In fiscal 1971, the New York State Department of Social Services referred 17,511 individuals for participation in the WIN Program. However, in that fiscal year, the Federal government allowed only 9,600 opportunities for enrollment in the WIN Program in New York State. Since the State work requirement was enacted, referrals to the State Employment Service increased twelvefold. Between November, 1971 and June, 1972, there were approximately 125,000 referrals under the work referral program. Compare that figure with the yearly total referrals under the Federal WIN Program:

Fiscal Year	68-69	9,127
	69-70	16,992
	70-71	17,511

From those figures it can be seen that, as a matter of fact, the WIN Program does not, in operation, occupy the entire field of work referral, nor does it occupy even a major percentage of that area.

Consequently, it can be readily seen that the question of whether or not the Congress intended that the Social Security Act provisions preempt the entire field of work referral present a very substantial Federal issue in the operation of the public assistance programs of both the State and Federal governments.

Not only do the practical effects of the decision of the Court below, holding that the Federal WIN provisions preempt the field of work referral and that all comparable state laws are therefore invalid, create a substantial Federal issue, but such an issue is also created as a matter of law, since this Court has held in the past that the Social Security Act does not preempt the entire field of welfare legislation. In *Snell* v. *Wyman* (281 F. Supp. 853 [S. D. N. Y., 1968], affd. without opinion 393 U. S. 323), the Courts considered a New York statute which provides for the recovery of previously paid welfare benefits from assets of recipients, such as equities in real estate, bank accounts, proceeds of lawsuits or insurance policies, etc. The Court there held that the Federal Social Security Act did not prohibit such legislation, either directly or by implication, and that the State statute was not rendered invalid simply because it did not accord with the social philosophy of either the plaintiff or the Court (281 F. Supp. at p. 863).

Less than two years ago, this Court specifically held that the Federal Social Security Act did not preempt the field of welfare legislation, even in areas covered by the Federal act itself (*Dandridge* v. *Williams*, 397 U. S. 471). In that case, holding valid a Maryland statute which set a maximum limit on the number of children in a family for which AFDC would be paid, this Court held as to the power of the States to legislate (397 U. S., p. 478):

> "In *King* v. *Smith*, *supra* (392 U. S. 309), we stressed the States' 'undisputed power,' under these provisions of the Social Security Act, 'to set the level of benefits and the standard of need.' *Id.*, at 334. We described the AFDC enterprise as 'a scheme of cooperative federalism,' *id.*, at 316, and noted carefully that '(t)here is not question that States have

considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' *Id.*, at 318-319. • • • Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds."

In view of the holdings in the above cited cases that the Federal Social Security Act does not preempt the entire field of welfare legislation, the question presented by this case, that is, the power of the States to enact work referral legislation parallel to but not superseding the WIN program, is indeed substantial and warrants the consideration of this Court.

In order for a Federal statute to preempt a permissible area of State legislation, the Courts have uniformly held that there must be a clear, express, and unequivocal expression of intent to do so. (See, *e.g.*, *Engineer* v. *Chicago, R. I. & R. R. Co.*, 382 U. S. 423 [1966]; *Schwartz* v. *Texas*, 344 U. S. 199 [1952]; *Chrysler Corp.* v. *Rhodes*, 416 F. 2d 319 [1st Cir., 1969]; *New Mexico Board of Examiners* v. *Roberts*, 70 N. M. 90, 370 P. 2d 811 [1962].)

The Federal Social Security Act does not expressly preempt the field of social welfare legislation. This Court has so held. Nor is there any clear and unequivocal implied intent to do so. The State and Federal programs are not mutually exclusive. Neither one acts to the exclusion of the other; they are in fact complementary, with referrals under the Federal WIN Program, where available, taking precedence over those under the State program.

The future direction that these programs of "cooperative federalism" will take will depend in great measure upon this Court's action in this case. The question presented to the Court is, therefore, substantial and warrants the consideration of this Court.

CONCLUSION

The Court should take jurisdiction of this appeal.

Dated: October 20, 1972.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Appellants, New York State Departments of Social Services and Industrial Relations and their Commissioners
The Capitol
Albany, New York 12224
Telephone (518) 474-7138

RUTH KESSLER TOCH
Solicitor General

JEAN M. COON
Assistant Solicitor General

of Counsel

APPENDIX "A"

Opinion of the Court

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUSLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

Civil 1971-306.

Before Oakes, *Circuit Judge*, Henderson, *Chief Judge*, and Curtin, *District Judge*.

Appearances:

Legal Aid Bureau of Buffalo, Inc. (Michael A. O'Connor, of Counsel) and National Employment Law Project, New York (Dennis R. Yeager, E. Richard Larson, and Mayer G. Freed, of Counsel), for the Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Jean M. Coon, Assistant Attorney General, of Counsel), for the Defendants.

Leonard C. Koldin, Onondaga County Welfare Attorney, for the Defendant-Intervenors.

The National Assembly for Social Policy and Development, Inc. (Elizabeth Wickenden, of Counsel), The National Welfare Rights Organization, City Wide Coordinating Committee of Welfare Organizations, and The Upstate Welfare Rights Organization (Adele M. Elong, Steven J. Cole, Kenneth P. Neiman and Henry A. Freedman, of Counsel), as Amicii Curiae.

CURTIN, *District Judge:*

This is an action challenging the constitutionality of various provisions of the New York Social Welfare Law and regulations of the state Department of Social Services, all enacted or adopted within the last year and commonly known as the New York Work Rules. The contested provisions are Sections 131(4) and 164, as amended,[1] and 350-k[2] of the Social Welfare Law and Department of Social Services Administrative Letters, Numbers 71 PWD-34[3] and 71 PWD-43.[4] In brief, the Work Rules establish a presumption that certain recipients of public assistance under various state welfare programs are employable and require such recipients to report semi-

monthly to the New York State Employment Service to pick up their assistance checks and accept referral to employment positions, including employment on public works projects. Relying on Title 42, United States Code, Section 1983, and its jurisdictional complement, Title 28, United States Code, Section 1343, the plaintiffs seek a judgment declaring the Work Rules violative of the Constitution in numerous respects, and an injunction restraining the enforcement of the Rules. Their complaint's demand for damages was ignored in the extensive briefs of the parties and is considered abandoned.

The named plaintiffs are recipients of public assistance under various general and particular categories of assistance[3] and proceed as representatives of a class composed of all other New York residents similarly situated. Temporary restraining orders directing the defendants to issue plaintiffs' assistance checks by mail and restraining enforcement of the Work Rules generally have been issued in the case of the named plaintiffs and a number of additional intervening plaintiffs, each of whom submitted affidavits alleging particular hardships as a consequence of compliance with the Work Rules.

The Work Rules were enacted in response to a March, 1971 special message from Governor Rockefeller directing the New York Legislature to consider means of transferring the able-bodied from the welfare rolls to payrolls.[4] Section 131(4) of the Social Welfare Law was amended to provide that employable welfare recipients, effective July 1, 1971, must pick up their grants in person semimonthly at a designated office of the Division of Employment of the State Department of Labor. The amendment

includes as presumptively employable all persons 16-64 years of age except for reason of

> illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor . . .; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the appropriate social services department to obtain others to provide such care.

In addition to establishing a system of referrals for employment in the regular economy, the Work Rules, Section 350-k, permit the establishment of public works projects in social services districts.[7] Failure to report and participate in the operation of the Work Rules deprives one of eligibility for public assistance.

The plaintiffs contend that the Work Rules compel involuntary servitude in violation of the Thirteenth Amendment, deprive persons subject to the Work Rules of due process and equal protection in violation of the Fourteenth Amendment, and conflict with provisions of the federal Social Security Act[8] in violation of Article 6, Clause 2, the Supremacy Clause of the Constitution.

Turning to the plaintiffs' last argument first, their position is that the application of the Work Rules to AFDC recipients is improper since to do so is to impose conditions of eligibility for assistance in addition to those set

out in the pertinent federal statutes, see Title 42, United States Code, Sections 602 *et seq.*, and thereby violate the statutory direction of Section 602(a)(10) that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." The plaintiffs further argue that the Work Rules are in conflict with and preempted by the federal Work Incentive Program (WIN),[9] at least with respect to persons in federally reimbursed assistance programs such an APDC.

In *King* v. *Smith*, 392 U. S. 309 (1968), *Townsend* v. *Swank*, 404 U. S. 282 (1971), and *Carlson* v. *Remillard*, 40 U. S. L. W. 4624 (U. S. June 7, 1972), the Court held that "a state eligibility standard that excludes persons eligible for assistance under Federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." *Townsend*, at 286. Plaintiffs point to Section 131(4) of the New York Social Welfare Law and its implementing regulation, 18 N. Y. C. R. R. § 385.6, which provide for the termination of assistance and/or a thirty-day penalty period upon a recipient's failure to comply with the Work Rules as inconsistent with Section 602(a)(10) of the Social Security Act. The state's only answering argument is that the Rules serve merely to implement Section 602(a)(8) of the Act. This section, according to the state, permits the state to disregard, in determining family need, the needs of any person who in the preceding thirty days or more has either deliberately reduced earning capacity, quit a job, or refused to accept employment offered through the State Employment Service. This, however, is a misreading of the statute. Section 602(a)(8) permits the state, where the recipient

fails to cooperate in the ways described, only not to disregard the first thirty dollars of earned income and one-third of the balance of the monthly earnings. Clearly the Work Rules go much further—they permit the denial of public assistance. As to AFDC eligibles, then, the Work Rules are in conflict with Section 602(a)(8).

Plaintiffs' second argument, that the Rules are preempted by the WIN program, has been successful in recent attacks on analogous state legislation in Virginia, see *Woolfolk v. Brown*, 325 F. Supp. 1162 (E. D. Va. 1971), aff'd, 456 F. 2d 652 (4th Cir. 1972), and Oregon, see *Bueno v. Juras*, ____ F. Supp. ____ (D. Ore. 1972). Both cases describe in detail the statutory and regulatory background of the WIN program, but a brief resume of the program's highlights may be appropriately repeated.

The WIN program, part of the 1967 amendments to the Social Security Act, is administered by HEW and the Department of Labor. State welfare agencies evaluate AFDC recipients to determine which are "appropriate" for referral to WIN. See Title 42, United States Code, Sections 602(a)(19)(A)(i) and (ii). The evaluation of individuals proceeds with unemployed fathers initially and other defined groups thereafter. See U. S. Dep't. of Health, Education & Welfare, Guidelines For the Work Incentive Program, § 6101 (1969). Upon referral by a caseworker familiar with the recipient's background, the local Employment Services Agency of the Department of Labor conducts its own assessment of the individual, draws up a plan meeting the individual's employability needs, and places him in a suitable work position, occupational training, or special work projects. See Title 42, United

States Code, Sections 602(a)(19) (D), 633(b), 633(d) and 634.

Like the Work Rules, WIN is "designed to help families and individuals to become self-supporting rather than dependent upon welfare checks," see S. Rep. No. 1589, 87th Cong., 2d Sess. 7 (1962), but, unlike the Work Rules, WIN provides more elaborate procedural protections for the public assistance recipient. Under WIN, the recipient is entitled to a hearing, prior to referral, on the issue of appropriateness for referral. See Title 42, United States Code, Section 602(a)(4) and 45 C. F. R. § 220.35(a)(15). A second hearing, if needed, on the issue of good cause for refusal to accept employment or training after referral to WIN is also required. See Title 42, United States Code, Section 633(g) and 45 C. F. R. § 220.35(a)(16). In the event of a finding that good cause is not present, a recipient may delay termination of assistance by accepting counseling for a period of sixty days. See Title 42, United States Code, Section 602(a)(19)(F).

As an incentive, WIN enrollees in assessing their welfare needs are permitted to disregard the first thirty dollars of their monthly earned income and one-third of the remainder. See Title 42, United States Code, Section 602(a)(8)(A)(ii). Adequate child care must be assured for working mothers as a precondition of WIN referral. See Title 42, United States Code, Section 602(a)(15)(B)(i). Compulsory referral of the aged, or those required at home for other reasons, is prohibited. See Title 42 United States Code, Section 602(a)(19)(A).

In contrast to the complex WIN referral procedures, with the use of appropriateness determinations, employ-

ability teams, and personal development plans, the screening procedures of the Work Rules are substantially less elaborate. In a recent study[19] of the operation and effect of the Work Rules, over sixty-seven percent of a sample of persons declaring themselves unemployable to the Department of Social Services caseworkers were, upon referral to the State Employment Service, found to be in fact unemployable and therefore improperly referred.

In enacting the WIN program and the Work Rules, Congress and the New York Legislature, respectively, have sought a similar end but by unquestionably different means. As the *Woolfolk* court noted:

> Congress has endorsed the use of the threat of termination of subsistence level support as a means of forcing the acceptance of training or employment only when the job or the training meets specific federal requirements. State rules seeking roughly similar ends but differing sharply in means cannot coexist. (325 F. Supp. at 1177.)

In addition to pointing to the *Woolfolk* decision as suitable authority for holding the New York Work Rules invalid under the Supremacy Clause, plaintiffs point to the comprehensiveness of a number of WIN provisions as evidencing a preemptive intent. For example, Section 602(a)(19)(A) of Title 42, United States Code, provides for the referral to WIN of *each* appropriate AFDC recipient. Further pointing up the conflict, plaintiffs argue, is the possibility that persons deemed inappropriate for WIN referral may nonetheless be referred to work under the Work Rules under threat of grant termination for failure to comply. Finally, plaintiffs point to the different penalty provisions of WIN and the Work Rules. The Work Rules require an

AFDC recipient to accept referral to WIN, when such a referral is made, under threat of being subjected to a penalty of thirty days of ineligibility for AFDC, see 18 N. Y. C. R. R. § 385.6(a)(2). WIN in contrast provides for ineligibility only for so long as a person refuses to cooperate. See Title 42, United States Code, Section 602(a)(1)(F). Further, WIN requires sixty days of counseling prior to termination for refusal to participate, but there is no counseling requirement prior to the imposition of the thirty-day penalty under the Work Rules.

While it should "not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so," *Schwartz* v. *Texas,* 344 U. S. 199, at 202 (1952), we find nothing in the state's brief which compels us to reach a conclusion different from *Woolfolk* and *Bueno* on the preemption question. The comprehensive intent and language of WIN, as well as its legislative history, clearly support the proposition that, for those in the AFDC program, WIN preempts the Work Rules program.

Plaintiffs next argue that the Work Rules violate the Thirteenth Amendment "because they violate the standards of due process which must be met before the highly placed freedom from compulsory work can be infringed, and because the public works projects implemented by the New York Work Rules impose a form of involuntary servitude on welfare recipients." We find the argument unpersuasive and without merit in all respects. Requiring employable persons on public assistance to engage in employment if available, in the absence of circumstances different from those presented in this case, is entirely proper. See generally, *United States* v. *Shackney,* 333 F. 2d 475 (2d Cir. 1964).

Plaintiffs' final arguments, that the Work Rules violate the Equal Protection and Due Process clauses of the Constitution, need only be considered with reference to recipients of public assistance under the Home Relief program, one over which the federal government exercises no "power of the purse."

Under the Equal Protection clause, it is argued that, while a classification of persons as "unemployed employables" might be rational, the Work Rules, by establishing a presumption of employability, erect an improper and irrational classification. The check pickup requirement, plaintiffs claim, works a serious hardship on recipients by effectively reducing their grants and subjecting recipients to the risk of a complete summary loss of assistance. These results arise from recipients incurring uncompensated transportation expenditures in traveling to pick up their checks and, where transportation is unexpectedly unavailable, risking loss of the check for several days in the complicated state welfare bureaucracy, since checks not picked up at SES must be returned to the local welfare agency until further investigation before release. The due process arguments are that the Work Rules' definition of employability is unreasonably vague, and that the absence of any provision in the Rules permitting recipients a hearing to challenge their classification as employable violates the requirements of *Goldberg* v. *Kelly*, 397 U. S. 254 (1970).

Practically, there are arguments which can be made that the presumption of employability is irrational. Before the state enacted this legislation, no attempt was made to determine the skills or training possessed by individuals who would be classified as employable, and the state had no

information about what jobs they could fill. This legislation was enacted at a time when throughout the state and elsewhere many individuals with considerable know-how and experience were being laid off and unable to locate new employment. "The number of unemployed [in New York last August] was the highest for any August on record."[11]

A statutory classification in the area of social welfare, however, is consistent with the Equal Protection Clause if it is "rationally based and free from invidious discrimination," see *Dandridge* v. *Williams*, 397 U. S. 471 (1970). The Work Rules reflect a judgment by the state's Executive and Legislature that a drastic revision of the state's welfare program was in order. This court cannot say that the Rules are without a rational basis under the circumstances.

This is not to say that the Rules do not inflict hardships upon welfare recipients. For those living a long distance from the SES office and without a private means of transportation, the semi-monthly check pickup is a major expense and therefore works a reduction of the grant. An attempt by the Legislature's Committee on Social Services to obtain passage of a bill (S. 8858, A. 10661) providing for a hardship justification permitting some to be relieved of the check pickup requirement failed to make any headway in the recent legislative session. Section 385.5 of the Regulations of the Department of Social Welfare, however, was amended by the Commissioner of Social Services in March, 1972. Under the amended regulations, semi-monthly reporting is changed to reporting four times a year if a "transportation hardship" exists and other conditions are met. The "transportation hardship" means:

(1) Absence of public transportation from the recipient's home to the SES office;

(2) Absence of private means of transportation, including neighbors, friends, and relatives;

(3) The recipient's home is not within a reasonable walking distance to such office; *and*

(4) The social services official is unable to provide transportation through the use of case aids, volunteers, etc. to enable the recipient to report to the SES on a semi-monthly basis.

If all the above are present and a "transportation hardship" is determined to exist, then the social services official may require the recipient to document his efforts to resolve his transportation hardship.

The difficulties incident to the semi-monthly check pickup requirement, while probably a harsh burden for many HR recipients if the affidavits of the intervening plaintiffs herein are any measure of problems arising across the state, do not on the facts now before the court arise to a denial of equal protection. There is no evidence that the state has singled out those with transportation hardships as targets of a special classification or special treatment.

The Work Rules are said to be unconstitutionally vague in defining those who are and are not subject to them. Particular reference is made to various regulations, for example, 18 N. Y. C. R. R. § 385.1(6), adopted in an effort to explain that list of factors in Section 131(4) of the Social Welfare Law, recited earlier,[12] which exempt the ill, aged, and certain others from participation in the program. While it is apparent that the Rules do not provide administrators with the detail and precision that would prevent

information about what jobs they could fill. This legislation was enacted at a time when throughout the state and elsewhere many individuals with considerable know-how and experience were being laid off and unable to locate new employment. "The number of unemployed [in New York last August] was the highest for any August on record."[11]

A statutory classification in the area of social welfare, however, is consistent with the Equal Protection Clause if it is "rationally based and free from invidious discrimination," see *Dandridge* v. *Williams*, 397 U. S. 471 (1970). The Work Rules reflect a judgment by the state's Executive and Legislature that a drastic revision of the state's welfare program was in order. This court cannot say that the Rules are without a rational basis under the circumstances.

This is not to say that the Rules do not inflict hardships upon welfare recipients. For those living a long distance from the SES office and without a private means of transportation, the semi-monthly check pickup is a major expense and therefore works a reduction of the grant. An attempt by the Legislature's Committee on Social Services to obtain passage of a bill (S. 8858, A. 10661) providing for a hardship justification permitting some to be relieved of the check pickup requirement failed to make any headway in the recent legislative session. Section 385.5 of the Regulations of the Department of Social Welfare, however, was amended by the Commissioner of Social Services in March, 1972. Under the amended regulations, semi-monthly reporting is changed to reporting four times a year if a "transportation hardship" exists and other conditions are met. The "transportation hardship" means:

(1) Absence of public transportation from the recipient's home to the SES office;

(2) Absence of private means of transportation, including neighbors, friends, and relatives;

(3) The recipient's home is not within a reasonable walking distance to such office; *and*

(4) The social services official is unable to provide transportation through the use of case aids, volunteers, etc. to enable the recipient to report to the SES on a semi-monthly basis.

If all the above are present and a "transportation hardship" is determined to exist, then the social services official may require the recipient to document his efforts to resolve his transportation hardship.

The difficulties incident to the semi-monthly check pickup requirement, while probably a harsh burden for many HR recipients if the affidavits of the intervening plaintiffs herein are any measure of problems arising across the state, do not on the facts now before the court arise to a denial of equal protection. There is no evidence that the state has singled out those with transportation hardships as targets of a special classification or special treatment.

The Work Rules are said to be unconstitutionally vague in defining those who are and are not subject to them. Particular reference is made to various regulations, for example, 18 N. Y. C. R. R. § 385.1(6), adopted in an effort to explain that list of factors in Section 131(4) of the Social Welfare Law, recited earlier,[12] which exempt the ill, aged, and certain others from participation in the program. While it is apparent that the Rules do not provide administrators with the detail and precision that would prevent

confusion and error in the classification process, so long as procedures exist whereby people who are not "employable" are not thrust indiscriminately into the class of "employables," neither the presumption of employability nor the lack of precision in some parts of the Rules rise to the dimension of violating due process.

This brings us to the question of the adequacy of the procedures under the Rules for fair hearings in accordance with *Goldberg, supra.* Plaintiffs claim there is no provision in the Work Rules for any formal administrative review of a person's classification as employable until his assistance grant is placed in jeopardy by a refusal to comply with the Rules. Further, unless the recipient prevails at the hearing at the pre-termination stage, the consequence of noncompliance is a mandatory thirty-day penalty during which assistance is denied even if the recipient changes his mind.

In an affidavit submitted to the court after oral argument in this matter, the Commissioner (then Executive Deputy) of the Department of Social Services stated in part:

> Under the fair hearing policies of the State Department of Social Services an individual who is determined to be employable by a local social services official and who feels aggrieved by such determination of his status as an employable person, has a right to a fair hearing before the State Commissioner of Social Services on such issue.
>
> There is no required condition for such fair hearing that the individual be first discontinued from public assistance. He may test, by a fair hearing, the correctness of his classification as an employable person, while complying with the registration, certification, employment referral and check pick-up requirements.

> Section 131, subdivision (4) of the Social Services Law requires every employable individual to receive his public assistance check in person at a local office of the State Employment Service; whereas, if he is deemed not to be an employable individual, the check is mailed to him. These requirements relate to the manner of payment of assistance. Accordingly, the issue of an individual's employability status is an "adequacy" issue relating to manner of payment under Section 84.3 of the Rules of the State Board of Social Welfare (now effective as a Regulation of the Department) which provides that applicants for or recipients of public assistance shall be entitled to a fair hearing on the grounds of: "inadequacy in amount or manner of payment of asistance . . ."

Although the Commissioner's representations effectively nullify plaintiffs' argument on the absence of and need for a fair hearing upon a determination of employability and before termination, the record remains barren of any indication that recipients are aware of the above procedure. Moreover, the general dimensions of the due process protections afforded at the hearing, see *Goldberg, supra,* at 267-71, are not described. To the extent that persons are unaware of their right to a hearing because of a lack of forthright disclosure by the state, the right's value is reduced. Accordingly, within thirty days after the filing of this decision, the state is directed to implement suitable means of informing HR recipients of their hearing rights. *Cf. Hagans* v. *Wyman,* Docket No. 72-1327 (2d Cir., June 5, 1972).

The further effect of this decision is to enjoin the operation of the Work Rules as applied to AFDC recipients. This, of course, does not mean that the court is ignoring the state's problems in managing its welfare system or dis-

agreeing with the merits of a state program to move persons from welfare rolls to payrolls. In short, as the *Bueno* court noted, "We recognize the pressure, political and moral, upon the [welfare department] to use both the carrot and the stick to try to place welfare recipients in gainful employment." What the decision does mean, however, is that at least with respect to AFDC recipients, the WIN program is the exclusive manner of applying the carrot and stick.

The Clerk is directed to enter judgment in this matter seven days after filing of this decision.

So ordered.

/s/ JAMES L. OAKES
U.S. C.J.

/s/ JOHN O. HENDERSON
U.S.D.J.

/s/ JOHN T. CURTIN
U.S.D.J.

Dated: July 28, 1972.

FOOTNOTES

[1] Subdivision four of Section 131 was amended by Chapter 102, Laws of New York, 1971.
Section 164 was amended by Chapter 101, Laws of New York, 1971.

[2] Section 350-k was added as a new section by Chapter 101, Laws of New York, 1971.

[3] Administrative Letter No. 71 PWD-34 provides as follows:
Chapter 102 of the Laws of 1971, effective July 1, 1971, amends Section 131.4 of the Social Services Law. The amendments contain three significant additions:
1. The statutory definition of "employable" is as follows:
A person shall be deemed employable if such person is not rendered unable to work by:

(a) illness of significant and substantial incapacitation, either mental or physical to the extent and of such duration that such illness or incapacitation prevents such person from performing services.
(b) advanced age.
(c) full-time attendance at school in the case of a minor, in accordance with provisions of the Law. (N. B. this is interpreted not to include emancipated minors.)
(d) full-time, satisfactory participation in an approved program of vocational training or rehabilitation.
(e) the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care.

2. A person assigned to and participating in a public works project under the provisions of sections 164 or 350-k of the Social Services Law shall be deemed to be employable but not employed.
3. Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the Division of Employment of the State Department of Labor.

The Department, in cooperation with the State Labor Department, is presently developing regulations, policies and procedures to implement this Law as of July 1, 1971. As these are developed, we will further advise you.

In order that each local social services district have as much time as possible to prepare for the orderly implementation of the Law, the following steps should be initiated immediately so that they are completed by no later than June 30, 1971.

A. Each social services district shall immediately review its under-care caseload to insure that its roster of HR and ADC employables is up to date. The roster shall be kept current by additions and deletions as they occur.
B. In addition, the following type cases shall be separately identified:
   1. The "employable" not deemed to be employable because of participation in an approved program of vocational training or rehabilitation; *i. e.*, WIN, MOTA, etc. (See Bulletin 26, page 7 for other examples). If the "employable" person is not the grantee, his relationship shall be specified.

2. The grantee is "employable", and there are one or more other "employables" in the family. The relationship of the other "employables" to the grantee shall be specified.
3. The grantee is not "employable", but there are "employables" in the family: *i. e.*, an instance of a disabled ADC mother with an "employable" 17 year old son; etc. The relationship of the "employable" to the grantee shall be specified.

C. In each case where there is an "employable" male head-of-family, he shall be made grantee for the family grant, if he is not presently the grantee.

D. Since the "employable's" Social Security Account number will be used as an identifier, all individuals age 14 and over are required to possess a Social Security Account number.

Methods and procedures for securing a Social Security Account number for those individuals not now possessing one will be released within the next few days.

[4] Administrative Letter No. 71 PWD-43 provides as follows:

As you know, the Laws of 1971 place a renewed and expanded emphasis on restoring all employable recipients of public assistance to employment in the regular economy. Accordingly, all unemployed employable persons applying for or receiving public assistance are not only required to register at the New York State Employment Service district office in their community, and report there regularly for appropriate employment counseling services and job referral; but, effective July 1, they will also pick up their assistance checks there. The penalty for not cooperating in this procedure is ineligibility for public assistance whether the individual is the grantee head of family, single person living alone, or non-grantee non-head of family.

The Law places the full responsibility for the determination of employability and for the required action in applying sanctions for failure to cooperate in the process on the local social service agencies. It is the intent of the Legislature that the services required to implement the various provisions of the Law be a top priority activity in social service agencies and that the necessary monitoring of the program to provide the report data necessary for evaluation be an inherent part of the entire process.

To assist you in implementing and evaluating the legal requirements, this Department has had a series of discussions and clearances with the New York State Department of Labor and the Social Security Administration. We have reached agreement regarding the basic components and a standardized procedure

which will assure uniform, effective processing and reporting operations state-wide. Obviously, it will be necessary for you to establish close working relationships with the local offices of these agencies to assure that everything possible is done to achieve an orderly work flow so that the objective of the Law to restore employable recipients to employment may be accomplished without confusion, or harassment to the recipients. Because of the wide variations in workloads throughout the State, some minor adjustments in the procedures outlined may be necessary at the local level. It is important that these do not interfere in any way with the required referral process or reporting requirements.

I also believe that there is need for planned local publicity around these new requirements of the Law and the procedures for implementing them. I urge you to utilize all available community resources to help you to promote a full understanding of this important legislation.

This Department is planning a series of special meetings around the State with you and representatives of your staff to explain and clarify the policy and procedural material reflected in this Administrative Letter. If you have any questions we will be happy to help you resolve them. Representatives from the Department of Labor will also be participating with staff of this Department in these meetings. I am certain that you will give this matter your immediate attention so that this intensified effort toward employment can be operative by July 1.

[5] The categories of public assistance in New York particularly common in this lawsuit are Home Relief and Aid to Families with Dependent Children. Home Relief [HR] is a general assistance program for persons not covered by other programs of assistance. Aid to Families with Dependent Children [AFDC and AFDC-U] is a program of financial assistance given to a family with minor children without sufficient means of support because of the absence, unemployment, death or incapacity of a parent. New York is partially reimbursed by the federal government for expenditures under the AFDC program, but there is no federal reimbursement for the costs of the HR program. See Title 42, United States Code, Sections 601 *et seq.* Other categories include Veteran Assistance, a segment of the HR program, and Old Age Assistance, Assistance to the Blind, and Aid to the Disabled. Excepting Veteran Assistance, these programs are partially federally financed. See Title 42, United States Code, Sections 1381 *et seq.*

[6] In pertinent part, the Special Message stated:

> Work is essential to a healthy individual and a healthy society.
>
> Welfare should be a bridge to work for those able to work, as well as a shield against want.
>
> Welfare benefits should aid those who work and need supplemental help.

But welfare benefits will not be a substitute for work.

The welfare legislation I am submitting to your Honorable Bodies therefore:

1. Redefines employability and limits the discretion of local social services districts to declare an individual unable to work;
2. Requires every employable public assistance recipient to report to the State Employment Service every two weeks to pick up his assistance check instead of having it mailed by the welfare district as is presently done;
3. Requires a bi-weekly employment counselor interview through which an employable public assistance recipient would be directed to a private job opportunity, or a training program, or a public works project;
4. Requires every social service district to provide or contract for a public works program—including neighborhood envioronmental and day care center work—to which the Emvironmental and day care center work—to which the Employment Service may assign appropriate employable recipients;
5. Directs the Employment Service to locate and develop employment opportunities for unskilled public assistance recipients, to maintain a special job register, and to provide job preparation and follow-up services;
6. Denies welfare to an employable individual who quits a job without good cause or refuses a job he or she is able to perform.

[7] The public works projects provisions have not been implemented. By letter, dated April 28, 1971, the HEW Regional Commissioner indicated to Commissioner Wyman that such projects, as they related to AFDC recipients, would not be approved for federal aid.

[8] In passing, it should be noted that despite the efforts of the plaintiffs, at the direction of the court, neither the views nor the participation of the Department of Health, Education, and Welfare could be obtained in this lawsuit.

[9] 42 U. S. C. §§ 602(a) and 632 *et seq.* See generally Comment, *Public Welfare "WIN" Program; Arm Twisting Incentives,* 117 U. Pa. L. Rev. 1002 (1969), and Comment, *The Failure of the Work Incentive (WIN) Program,* 119 U. Pa. L. Rev. 485 (1971).

[10] See *Study of Selected Aspects of the 1971 New York State Legislative Provisions on Public Assistance Employables* (March 1972) prepared by the United States Department of Health, Education, and Welfare and Department of Labor and the New York State Department of Labor and Department of Social Services.

[11] *Id.* at 21.

[12] See page 23, *supra.*

APPENDIX "B"

Final Judgment Appealed From

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, *et al.*,

v.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*

Civ—1971-306.

Sir:

Take notice of an Order, of which the within is a copy, duly granted in the within entitled action on the 25th day of August, 1972, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 25th day of August, 1972.

Dated: Buffalo, New York, August 25, 1972.

JOHN K. ADAMS, Clerk
U. S. District Court
U. S. Courthouse
Buffalo, New York 14202

Final Judgment Appealed From

To Michael A. O'Connor
Attorney for Plaintiffs

To Mayer G. Freed
Attorney for Plaintiffs

To Jean M. Coon
Attorney for Defendant—NYS

To Leonard C. Koldin
Attorney for Defendant—Lascaris

To Gregory Stamm
Attorney for Defendant—Erie County

Federal Rules of Civil Procedure 77(d)

Final Judgment Appealed From

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

Civil 1971—306.

This action having come on to be heard on the merits before the Court, the Honorable James L. Oakes, Circuit Judge, the Honorable John O. Henderson and the Honorable John T. Curtin, District Judges for the Western District of New York, and after hearing arguments of counsel, the Court having rendered its opinion on July 28, 1972, and the Court having considered judgments proposed by plaintiffs and defendants, it is hereby ORDERED, ADJUDGED and DECREED:

Final Judgment Appealed From

1. That pursuant to 28 U. S. C. §§ 2201 and 2202, N. Y. Soc. Serv. L. §§ 131(4) and 350-k, 18 N. Y. C. R. R. Part 385, and all Administrative Letters of the New York State Department of Social Services issued pursuant thereto (these statutes, regulations, and Administrative Letters are hereafter referred to collectively as the "New York Work Rules"), be and are hereby declared to be in conflict with § 402(a)(10) of the Social Security Act of 1935 as amended, 42 U. S. C. § 602(a)(10), and to be preempted by §§ 402(a)(19) and 430 *et seq.* of the Social Security Act of 1935, as amended, 42 U. S. C. §§ 602(a)(19) and 630 *et seq.*, and are unconstitutional under the supremacy clause of Article VI of the United States Constitution, insofar as they are applied to applicants for or recipients of Aid to Families with Dependent Children and Aid to Families with Dependent Children—Unemployed Parent (these two programs will hereafter be referred to as "AFDC") in the State of New York.

2. That from 60 days after the date of this order and judgment, defendants, their successors, agents, and all persons acting in concert with them, be and hereby are permanently enjoined, ordered and directed to cease all enforcement of the New York Work Rules against recipients of and applicants for AFDC in the State of New York.

3. That defendants New York State Department of Social Services and its Commissioner, Abe Levine, be and are hereby enjoined, ordered, and directed to require each local Social Services District in the State of New York to deliver all checks for AFDC benefits by mail, such checks to be for the full monthly or semi-monthly benefit, and to cease requiring any AFDC recipients, including any person

participating in the Work Incentive Program, to obtain his or her check for AFDC benefits by reporting in person to an office of the State Employment Service. Delivery of checks by mail shall commence within 60 days of the date of this order and judgment.

4. That plaintiffs' First, Second and Third Causes of Action be and are hereby dismissed, except that with respect to plaintiffs' Second Cause of Action, defendants New York State Department of Social Services and its Commissioner, Abe Lavine, be and hereby are enjoined, ordered and directed to adopt and implement by September 29, 1972, suitable means of informing each recipient of Home Relief, who has been declared employable pursuant to the New York Work Rules, of his rights to a fair hearing on the issue of employability.

5. Plaintiffs are hereby awarded costs but not attorneys' fees.

6. Implementation of the foregoing judgment will be subject to further order of this Court upon due application as justice may require.

JAMES L. OAKES
U. S. C. J.

JOHN O. HENDERSON
U. S. D. J.

JOHN T. CURTIN
U. S. D. J.

Dated:

APPENDIX "C"

Order Amending Judgment

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

Civil 1971—306.

Appearances:

Legal Aid Bureau of Buffalo, Inc. (Michael A. O'Connor, of Counsel), and National Employment Law Project, New York (Mayer G. Freed, of Counsel), for the Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Jean M. Coon, Assistant Attorney General, of Counsel), for the Defendants.

Order Amending Judgment

James L. Magavern, County Attorney, Erie County (Gregory Stamm, Assistant County Attorney, of Counsel), for Defendants Erie County Department of Social Services and its Commissioner, George G. Sipprell.

The plaintiffs' motion to amend the Court's order of August 25, 1972 having been argued, with the consent of the parties, before the Honorable John T. Curtin, District Judge for the Western District of New York, and Judge Curtin having made a report to the other members of the Court, the Honorable James L. Oakes, Circuit Judge, and the Honorable John O. Henderson, Chief Judge for the Western District of New York, and the Court having considered the briefs and other materials submitted by the parties, it is hereby

ORDERED that the Court's order of August 25, 1972 be amended by adding the following paragraph after paragraph 2:

> 2a. That after September 21, 1972 there be no enforcement of sanctions against AFDC recipients for violations of the New York Work Rules.

It is further hereby

ORDERED that in all other respects the plaintiffs' motion to amend the Court's order of August 25, 1972 is denied.

/s/ JAMES L. OAKES
U. S. C. J.

/s/ JOHN O. HENDERSON
U. S. D. J.

/s/ JOHN T. CURTIN
U. S. D. J.

Dated: October 18, 1972.

APPENDIX "D"

Notice of Appeal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

---

71 Civ.—306.

Notice is hereby given that the New York State Department of Social Services, its Commissioner, Abe Levine, the New York State Department of Labor, and the Industrial Commissioner of the State of New York, Louis L. Levine, defendants above-named, hereby appeal to the Supreme Court of the United States from the final order and judgment entered in this action on August 25, 1972, holding New York Social Services Law, §§ 131(4) and 350-k, and the

Rules of the Department of Social Services adopted pursuant thereto to be in conflict with section 402(a) (10) of the Social Security Act of 1935, as amended, 42 U. S. C. § 602(a) (10), and to be preempted by sections 402(a) (19) and 430 *et seq.* of the Social Security Act of 1935, as amended, 42 U. S. C. §§ 602(a) (19) and 630 *et seq.* and to be unconstitutional under the Supremacy Clause of Article VI of the Constitution of the United States, insofar as they are applied to applicants for or recipients of Aid to Families with Dependent Children, and dismissing plaintiffs' First, Second and Third Causes of Action. Defendants appeal from each and every part of said order and judgment, except that part thereof which dismissed plaintiffs' First, Second and Third Causes of Action.

This appeal is taken pursuant to 28 U. S. C. § 1253.

Dated: Albany, New York,
September 26, 1972.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
By JEAN M. COON
Assistant Solicitor General
Attorney for defendant State
departments and State officers
Department of Law
The Capitol
Albany, New York 12224
Tel: (518) 474-7138

To:

John K. Adams, Clerk
United States District Court
United States Court House
Niagara Square
Buffalo, New York 14202

Michael A. O'Connor, Esq.
Attorney for plaintiffs
Legal Aid Bureau of Buffalo, Inc.
481 Swan Street
Buffalo, New York 14204

Dennis R. Yeager, Esq.
Attorney for plaintiffs
423 West 118th Street
New York, New York 10027

Philip Pinsky, Esq.
Attorney for defendant-intervenors
600 South State Street
Syracuse, New York 13202

Gregory Stamm, Esq.
Attorney for defendant Erie County
25 Delaware Avenue
Buffalo, New York 14202

APPENDIX "E"

New York Law of 1971, Chapter 101

New York Law of 1971, Chapter 101 provides:

"Section 1. Section one hundred sixty-four of the social services law, such section having been added by chapter seven hundred fourteen of the laws of nineteen hundred fifty-nine, paragraph a of subdivision two thereof having been last amended by chapter six hundred seventy-three of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

"§ 164. Work relief. 1. As hereinafter provided, employable persons receiving home relief shall be required to perform such work as shall be assigned to them by the social services official furnishing such home relief or by the state industrial commissioner as hereinafter provided.

"2. (a) The social services official of a county, city or town which is responsible for providing home relief shall provide for the establishment of public work projects for the assignment of employable persons in receipt of home relief to perform work for such county, city or town or for the state, and the head of any department, bureau, division or other unit thereof may request that such persons be assigned to his unit. In providing for the establishment of such public work projects, such social services official may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section. In the case of a county social services district which is responsible for providing home relief within towns or cities within the county, persons may be assigned to work for the state or any city, town, or village in the county and the head of any department, bureau, division or other unit of the state or any such city, town or village may request such assignment. In

the case of a town which is responsible for providing home relief within a town, persons may be assigned to work for any village in the town and the head of any department, bureau, division or other unit of any such village may request such assignment. The request shall be addressed to the social services official or to the state industrial commissioner, in appropriate instances, and shall indicate the number of persons who can be used and the character of the work to be performed.

"(b) The social services official or the state industrial commissioner shall thereupon assign such persons in receipt of home relief who, in his judgment, are able to perform the work indicated, provided he is satisfied that such persons will not be used to replace, or to perform any work ordinarily and actually performed by, regular employees of any department or other unit of such county, city or town, or to replace, or to perform any work which would ordinarily be performed by, craft or trade in private employment.

"3. (a) Persons shall be assigned to perform only such work as they are able, in the judgment of the social services official or the state industrial commissioner, to perform.

"(b) The number of days of work to be given each person shall be determined by the amount of the budget deficit of the recipient and his family computed on local home relief budget schedules. No person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount. No person shall be required to work more than eight hours in a day or more than forty hours in a week.

"4. Any person who refuses to report for or to perform work to which he has been assigned by the social services official or the state industrial commissioner shall thereupon become ineligible for home relief.

"§ 2. Such law is hereby amended by adding thereto a new section, to be section three hundred fifty-k, to read as follows:

"§ 350-k. Public works projects. 1. Public works projects meeting state and federal requirements shall be established, or the establishment thereof shall be provided for, by every social services district for the conservation of work skills and/or the development of new skills of parents and other eligible relatives receiving aid to dependent children from such district.

"2 In providing for the establishment of such projects, the district may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.

"3. A parent, or other eligible relative whose maintenance is included in the grant and allowances, may be assigned to participate in such a public work project, only if: (a) appropriate standards of health, safety and othed work conditions are maintained;

"(b) the number of days work to be given each person shall be determined in the case of a parent, by the amount of the grant or allowance, and in the case of such other eligible relative, by the amount included in the grant or allowance for his maintenance, provided that no person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount, or to work more than eight hours in a day or more than forty hours in a week.

"(c) such assignment would not result in the displacement of regular workers or in the performance by such parent or relative of work that is being performed by employees of public or private agencies, institutions or organizations;

"(d) provisions are made to extend coverage to such parent or relative under the workmen's compensation law;

"(e) such person is deemed employable under the provisions of subdivision four of section one hundred thirty-one of this chapter;

"(f) provisions are made to permit such parent or relative to seek regular employment and/or to secure appropriate training or re-training opportunities which may be available.

"4. A parent or other eligible relative required to participate in a public work project who fails to participate in such project, without good cause, as defined by regulation of the department, shall thereupon become ineligible for aid to dependent children.

"5. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not bring an action or proceeding against any person, to recover for payments correctly made to a parent or other eligible relative on account of his participation in a public work project.

"6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

"(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

"§ 3. Section eight hundred twenty-one of the labor law, as amended by chapter one hundred twenty-eight of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

"§ 821. State training courses. The commissioner may provide for vocational and related, institutional and on-the-job training courses as described in section

five hundred ninety-nine of this chapter and for the administration of public work projects for recipients of public assistance, and may contract for these purposes with public and private agencies including public and private institutions of learning, employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and underemployed persons who would meet the conditions for approval as specified in section five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for occupational training, nor assigned to public works projects by public welfare officials. The commissioner may provide for such payments, either in advance or by way of reimbursement, from funds made available to carry out the purposes of this article, as he deems necessary.

"§ 4. This act shall take effect July first, nineteen hundred seventy-one."